



सत्यमेव जयते

SHAH COMMISSION OF INQUIRY

(Appointed under Section 3 of the Commissions of Inquiry Act, 1952)

THIRD AND FINAL REPORT

AUGUST 6, 1978

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CHAPTER XVI

Wrongful Confinement and Torture of Shri Lawrence Fernandes by the Police and Maltreatment in Jail

16.1 Shri Lawrence Fernandes of Bangalore complained to the Commission that he was taken away from his house in Bangalore at about 8.45 p.m. on May 1, 1976, by two policemen—Inspector Narayan Rao and another officer belonging to the Corps of Detectives of the Karnataka Police, Bangalore; that he was taken to the office of the Corps of Detectives and was interrogated by the police officers regarding the whereabouts of his brother, Shri George Fernandes; that Shri Krishnamurthy Raju, Superintendent of Police of Corps of Detectives, also interrogated him in this connection and when he could not give information to the satisfaction of the police officers, Shri Raju got annoyed and asked the police officers “to start the work”; that he was brutally assaulted by 8 to 10 policemen including Inspector Narayan Rao, Inspector Shiva Swamy and 5 to 7 other officers; that he was beaten with lathis, in consequence of which he suffered injuries on his hands and feet and the rest of his body; that the assault continued till 3.00 a.m. the next morning, and during this period he was not given anything to eat or drink.

16.2 The story of Shri Lawrence that he was taken away by the police on the night of May 1, 1976, is corroborated by the report lodged by his father, Shri J. J. Fernandes, with the police control room on May 2, 1976. In the “Crime and Occurrence Sheet” dated May 3, 1976, maintained by the City Police, incorporating therein reports received on May 2, 1976, it is revealed that a telephonic message was received from Shri Jacob Fernandes that his son Shri J. J. Fernandes was missing since May 1, 1976. The name of the missing person is entered as ‘J. J. Fernandes’ and stands in fact for Shri Lawrence Fernandes. Shri Jacob Fernandes has stated that he had in his complaint to the police control room informed that the police had taken away his son from his house on the night of May 1, 1976 and the enquiries conducted by him with the various City Police stations had yielded no results. The police control room record relating to the “Crime and Occurrence Sheet” dated May 3, 1976, mentions only the complaint made by Shri Jacob Fernandes that the complainant’s son, Shri J. J. Fernandes was missing. This entry is silent regarding what Shri Jacob Fernandes had told the Control Room about the police having taken away his son Shri Lawrence Fernandes. Shri Srinivasavulu, the then Deputy Commissioner of Police, has stated before the Commission that an inward register is maintained in the control room in which a gist of all the messages received by the control room during the day are entered. This inward register was not produced before the Commission on the plea that it was not available. The Commission is unable

to ascertain the contents of the entry in the inward register pursuant to what Shri Jacob Fernandes had reported to the Control Room. The mother of Shri Lawrence Fernandes also submitted a petition and a telegram dated May 5, 1976 and May 7, 1976 respectively, addressed to the Commissioner of Police, Bangalore City, and other officials complaining therein that her son Shri Lawrence Fernandes was taken away by the police from the house on May 1, 1976, at about 8.45 p.m. Copies of these had also been sent to the Chief Minister of Karnataka, the President of India, the Prime Minister of India and the Chief Justice of India. These contemporaneous complaints made by the parents of Shri Lawrence circumstantially corroborate the evidence of Shri Lawrence Fernandes that he was in fact taken away from his house by the police on the night of May 1, 1976.

16.3 Shri Vikram Rao, a Correspondent of the Times of India and one of the accused in the Baroda Dynamite Case has stated that he had seen Shri Lawrence in police custody on May 1, 1976, when Shri Lawrence was pointed out to him through a window and he was asked to identify Shri Lawrence Fernandes.

16.4 Shri Konarak, son of Shri Pattabhirama Reddy has also stated that he saw Shri Lawrence travelling in the same jeep as himself on the morning of May 2, 1976, though he did not speak to Shri Lawrence Fernandes. Shri Pattabhirama Reddy has also stated before the Commission that his son Konarak, after he had been released by the police on May 3, 1976, had told him that he had seen Shri Lawrence in the custody of the police on May 2, 1976.

16.5 The complaints of the parents of Shri Lawrence Fernandes and the statements of Shri Vikram Rao and Konarak, establish that Shri Lawrence Fernandes was in fact in the custody of the police from the night of May 1, 1976 onwards. There is no other evidence to disprove that fact. Failure to produce the inward register maintained in the control room for the relevant period in spite of the efforts of the Commission to procure the same from the authorities concerned, assumes significance. The Commission is, therefore, of the view that the statement of Shri Lawrence that he was taken away from his house and kept in illegal police custody from May 1, 1976, is true.

16.6 Shri Lawrence has in his complaint alleged that on the night of May 3, 1976, his physical condition had deteriorated considerably because of the police torture and some doctor was called by the police to examine him. He has stated that the name of the doctor was Dr. Rajgopal.

16.7 Dr. Rajgopal who was examined before the Commission, has stated that he had attended on Shri Lawrence on May 3, 1976. Dr. Rajgopal has stated that he was called out at night from his house by some constables attached to the Malleswaram Police Station and was asked to accompany them to examine a relative of a police officer who was unwell; that he was taken by these constables in a closed motor car or a jeep and was ushered into a big building where, in a room, he saw a person wearing a "net banian" standing in a "bending" position; that he—Dr. Rajgopal—tried to ascertain what the matter was with the person, but the police constables advised him—Dr. Rajgopal—not to put questions but only to examine the patient; that he accordingly examined the patient and found him in severe pain; that the patient was also complaining about pain in his foot; that he—Dr. Rajgopal—advised those present to get the patient "immediately hospitalised and X-rayed"; that in the view of Dr. Rajgopal, "injuries must have been due to some external violence or some such thing" as there was swelling on his body; and that he suspected fracture of the left lower foot and recommended X-ray. Dr. Rajgopal said that he saw the same patient at the K. C. General Hospital on May 13, 1976 and recognised him as the same person whom he had seen about 10 days earlier when he was called out by some police constables from his house in the night and was shown a patient lodged in a room of a big building; that on May 13, 1976 also he was not allowed to ask questions to the patient by the police officers who had brought him; that he, Dr. Rajgopal, had told the police officers that it would not be possible to admit him in the hospital unless they brought a memo and a slip from the Out Patients Department for his examination and admission; and that by the time Dr. Rajgopal went out to the OPD and returned within about 10 minutes, Shri Lawrence and the police party accompanying him had left the place. Dr. Rajgopal stated that he did not know the name of the patient until after when he saw the news carrying the details of detention of Shri Lawrence and his treatment in the K. C. General Hospital which had appeared in the papers after the emergency was lifted.

16.8 No adequate reason is suggested why the statement made before the Commission by Dr. Rajgopal should not be accepted. No evidence has been adduced by the police officers concerned to refute the statement made by Dr. Rajgopal; nor have they alleged any ground which may throw doubt on the veracity of Dr. Rajgopal.

16.9 Shri Lawrence has stated in his complaint that during the time that he was in the custody of the police at the Malleswaram Police Station, he had developed severe chest pain in the early morning of May 7, 1976, at about 2 a.m. and had complained to the police about some trouble in breathing; that thereupon, Inspector Parameswarappa along with two constables of Malleswaram Police Station had taken him to the K. C. General Hospital in a taxi; that he was attended to by one

Dr. Javarappa who prescribed an injection and some tablets; that one nurse Mary gave the injection as prescribed. Dr. Javarappa has stated that a patient was brought at about 2 a.m. in a wheeled chair turned after washing his hands, the police officer by name Shri Parameswarappa when he was on casualty duty; that the patient who was wearing only a "banian", was speaking in a low voice and complaining of pain in and around the chest; that he advised the staff nurse to give him some pain-relieving injection and advised the officer to take the patient to a physician the next day; that the patient was hardly with him—Dr. Javarappa—for about 4 to 5 minutes, and that by the time he returned after washing his hands, the police officer had left the place with the patient. No entry in any official records was made by Dr. Javarappa about this visit nor did he mention about this fact of a patient brought by a police officer under police escort in a wheeled chair, without any official note, and the police party leaving the hospital abruptly along with the patient, to any of his senior officers on the following day. He has, however, stated that a few days after this Dr. Rajgopal had narrated to him that he had been taken by the police to a far off place where he had examined a patient involved in the Dynamite case, and that on hearing this from Dr. Rajgopal, Dr. Javarappa thought that the person who was brought to him on that night when he was on casualty duty might have been the same person. Dr. Javarappa, however, did not identify Shri Lawrence before the Commission.

16.10 Inspector Parameswarappa of the Malleswaram Police Station, while deposing before the Commission, stated that he had visited the K. C. General Hospital Casualty Ward on one night in May 1976, with his brother who was suffering from a heart ailment, and who was complaining of pain in the chest when Inspector Parameswarappa had returned home late that night. Inspector Parameswarappa was not able to give a satisfactory explanation as to why his brother, who was a heart patient, was taken at that time of the night to the hospital under police escort and as to why he did not think it necessary to get entries made in the relevant hospital registers regarding the treatment given to his brother for a heart ailment. He has denied that he had taken his brother to the hospital under police escort. He was not able to explain satisfactorily as to why he took away his brother in such a great hurry and even before the doctor who had gone in to wash his hands, came back. He was unable to explain why he was in uniform on that occasion. Inspector Parameswarappa had also not been able to explain why he did not give even the name of the patient, nor did he inform the medical officer his relationship with the patient. No case papers were prepared in the hospital with regard to the visit of his brother; it is indeed surprising why, if the patient was in fact a heart patient, he had chosen to take him away without the clearance from the doctor or for that matter even without waiting for the doctor to return after washing his hands. The doctor had advised the patient to be shown to a physician the following

day. On this point Inspector Parameswarappa has stated that he had sent his brother alone and he had not accompanied him the following day to a physician.

16.11 The Commission has no hesitation in disbelieving the story of Inspector Parameswarappa. In the view of the Commission, the story is false and is invented in an effort to save himself and his colleagues from the probable consequences of the illegal police detention and torture of Shri Lawrence. The cumulative effect of the statements of Inspector Parameswarappa Leaves no room for doubt that they are a tissue of lies.

16.12 In the light of the evidence of the different witnesses who had deposed before the Commission it is established beyond doubt that Shri Lawrence was in illegal custody of the police from the night of May 1, 1976 and that he had been subjected to physical torture which necessitated his examination by two different doctors on two different dates : on the nights of the 3rd and the 7th of May, 1976.

16.13 Shri Lawrence said that he was taken out of the Malleswaram Police Station lock up on May 9, 1976, and was given a shave by a barber; that at about 3.30 p.m. two COD officers who later introduced themselves as Shri Visveshwariah, Deputy Superintendent of Police and Inspector Ramachandriah put him in a waiting police car with the help of two constables and drove him towards Yeshwantpur on Bangalore-Bombay National Highway; that the officers had also told him that his parents had moved the Government both at the Centre and the State levels and also at higher police level; and that they were taking him to Chitradurga to regularise his arrest on May 1, 1976 and detention thereafter; that while on their way to Chitradurga in the car, Shri Lawrence saw three Government vehicles proceeding towards Bangalore; the first a police van bearing registration No. MYW 7715 or MYW 1577 and the remaining two were State cars, one bearing No. 8510 with a flag mast, followed by another State car whose number he did not remember. Sighting of a police van by Shri Lawrence is corroborated by the information received from the Superintendent of Police, Dharwar, who in a wireless message to the Commission has stated that a police truck No. MYW 1577 belonging to Dharwar District Police was on the move from Dharwar to Bangalore. On May 9, 1976, for bringing new Motor Cycles from Bangalore and that the journey had been duly entered in the log book. This is further corroborated by the log book of the vehicle MYW 1577.

16.14 Shri Lawrence has further stated that during this journey the police officers stopped the car at four police stations on the way. At a police station very near Chitradurga, he learnt from the policeman deputed to keep a watch on him that a major accident between a lorry and a car had taken place on the same day. This constable also mentioned that a leading medical practitioner in the

District who was driving the car was involved in the accident. Shri Lawrence had also 'seen the accident'. This information gathered by Shri Lawrence while in custody of the police is confirmed by the Superintendent of Police, Chitradurga, who has informed the Commission that an accident between a motor car and a lorry had taken place on May 9, 1976, at about 9.45 a.m. on Hiriyur-Chitradurga road. It is also confirmed that the motor car was being driven by a doctor who was injured in the accident.

16.15 Shri Lawrence and the police party reached Davangere at about 9.30 p.m., where according to Shri Lawrence, he was taken to Davangere extension Police Station and lodged in a lock up which was full of cockroaches, bugs and mosquitos and without adequate ventilation. All his pleadings and requests for shifting him to the office room where he had been initially kept were turned down and he was threatened and abused by Shri Visveshwariah. Shri Lawrence has further said that in the morning of May 10, he was taken out of the lock up at 8.30 a.m. and was taken to the office room where he was offered some food, and was warned by the police officers that he should not open his mouth when produced before the Magistrate, otherwise dire consequences could follow. Shri Lawrence was taken to a Magistrate at about 1.30 p.m. and produced before him in his chamber at about 2.00 p.m. when there was no one else in the court room; that he was before the Magistrate for about one minute and was asked by the Magistrate in the presence of Deputy Superintendent of Police Shri Visveshwariah whether he had anything to say. Shri Lawrence has stated that after a brief silence and with tears in his eyes, he just said "what can I say"? He was then taken out and made to walk back to the police station barefoot in the burning hot sand.

16.16 The police record shows that Shri Lawrence was arrested in Davangere on May 10, 1976, at 6.00 a.m. at the bus stand in case Nos. 49 and 50 of 1975 of SBC Railway Station, Bangalore. These cases pertain to explosions on the railway tracks caused by unknown miscreants. The records further show that he was produced before the First Class Magistrate, Davangere, on May 10, 1976, and was remanded to police custody till May 20, 1976.

16.17 The story related by the Police Officers that Shri Lawrence was arrested on May 10, 1976, at Davangere at a bus stand bears a clear impress of fabrication and untruth. According to the records, the two cases Nos. 49-50 of 1975 of SBC Railway Station, Bangalore, were under investigation of Shri Vittal Naik, Assistant Commissioner of Police, City Police, Bangalore, while case No. 37 of 1975 of P. S. Railway Station Arsekeri was under investigation by Shri Visveshwariah, Deputy Superintendent of Police, COD. Shri M. V. K. Raju, Superintendent of Police, COD, Bangalore, was supervising the investigation of Shri Visveshwariah while Shri Srinivasavulu, Deputy

Commissioner, Law and Order, was supervising the investigation done by Shri Vittal Naik. The Investigating Officers visited Baroda where explosions had also taken place to make enquiries and till April 5, 1976, no link had been established between the explosions in Baroda, Bihar etc. and Karnataka as mentioned by Shri Vittal Naik in case Diary No. 30 of case crime No. 49/50 of 1975 SBC Bangalore. No complicity of Shri Lawrence has been shown in any of the case files of the explosion cases till April 22, 1976. Shri Visveshwariah, Investigating Officer of case No. 37 of 1975 of Railway Police Station, Arsekeri, contacted Shri Vikram Rao, Correspondent of the Times of India while he was in the custody of the Gujarat State Police as one of the suspects in the Baroda Dynamite case. He brought Shri Vikram Rao in custody to Bangalore for interrogation in connection with the explosion cases of Karnataka. The statement of Shri Vikram Rao is shown to have been recorded in the concerned case file by Shri Visveshwariah on April 25, 1976, and twice on April 30, 1976, at Bangalore. While these statements should have been filed with the respective case diaries of the relevant dates on which these were recorded, it is found that all the three statements were attached to the case diary of April 30, 1976. Further, there is nothing in the detailed statement of Shri Vikram Rao dated April 25, 1976, running into 15 pages, to show that Shri Lawrence was in any way involved in the Explosives cases of Karnataka. Similarly, the statement of Shri Vikram Rao dated April 30, 1976, which is also a fairly detailed one, does not disclose any complicity of Shri Lawrence in these cases. The date of this statement, however, appears to have been changed from April 25, 1976 to April 30, 1976. The Investigating Officer Shri Visveshwariah could render no explanation for the alteration of the date of the statement as attached to the diary. In between these two statements another short statement dated April 30, 1976 is attached which is typed on a typewriter different from the one on which the other statements had been typed. In this statement of Shri Vikram Rao, he is alleged to have given out the names of those whom he met at Madras and this statement includes the name of Shri Lawrence Fernandes. Here also, no direct implication of Shri Lawrence Fernandes has been shown in the bomb explosions on the railway tracks in Karnataka. The gist of the statement of Shri Vikram Rao bearing the date April 30, 1976 is incorporated in the case diary dated April 25, 1976. How the gist of the statement recorded on April 30, 1976 could find a place in the case diary dated April 25, 1976 has not been explained by Shri Visveshwariah.

16.18 Shri Vikram Rao stated that he had been interrogated by Shri Visveshwariah at Bangalore but he had not implicated Shri Lawrence in the explosion cases; and that if any such statement of his has been recorded by the police, such a statement would be entirely false. This statement of Shri Vikram Rao before the Commission coupled with

the suspicious circumstances of the gist of his statement to the Police appearing in the wrong case diary render the version of the police unreliable. The object of the police in manipulating the case diary is palpably an effort to create evidence to justify the arrest and detention of Shri Lawrence.

16.19 The case diary maintained by Shri Visveshwariah dated April 30, 1976 contains an entry that he deputed his sources and special duty staff to search for Shri Lawrence who, as per case diary dated April 25, 1976, was believed to be involved in the explosion case being investigated by him. According to Shri Visveshwariah, Shri Lawrence could not be traced and as per the information furnished by his source, Shri Lawrence had been absconding from his house since April 30, apprehending his arrest. As against this, the Commission has before it documentary evidence that Shri Lawrence was present in Bangalore on April 27 and May 1, 1976. He had visited the Central Jail, Bangalore, on April 27, 1976, to meet his brother Shri Michael Fernandes who was a MISA detenu. For this purpose, he had submitted an application to the jail authorities under his own signature and had obtained permission for interview. He again visited the Central Jail on May 1, 1976, for the same purpose in a taxi and this time he was accompanied by his brother Shri Alloysés Fernandes and his brother's wife Smt. Lavina. According to Shri Lawrence, his brother Shri Alloysés and his family had reached Bangalore the same day and he had gone to the airport in the morning to receive them. In the light of this evidence, the stand taken by Shri Visveshwariah that Shri Lawrence was absconding from his house since April 30, 1976, is not acceptable.

16.20 The circumstances in which Shri Lawrence was reported to have been arrested by Shri Visveshwariah is a story which is entirely incredible. According to Shri Visveshwariah, on getting information from his source that Shri Lawrence had proceeded towards Hubli side, Shri Visveshwariah along with Inspector Ramachandriah of COD, who could identify Shri Lawrence, left Bangalore and arrived at Davangere on the night of May 9, 1976; that in the morning of 10th, at 6.00 a.m., when they were on their way to Hubli, Inspector Ramachandriah was reported to have spotted Shri Lawrence at Davangere bus stand; that after satisfying themselves about his identity Shri Lawrence was taken into custody by these two police officers; and that later Shri Lawrence told Shri Visveshwariah that he was about to board the bus for Hubli when he was arrested. But on the person of Shri Lawrence no bus ticket for Hubli or any other destination was found and there was no money with him. The search of Shri Lawrence did not yield any spare clothes or the other essentials required for daily life. Shri Visveshwariah was not able to explain how Shri Lawrence could board the bus for Hubli when on the person of Shri Lawrence no ticket for the journey and no money for expenses or even the minimum personal needs required by a person while travelling were found.

16.21 The case diaries of the dates following the arrest of Shri Lawrence do not give any indication of the enquiries that should necessarily have been conducted about the whereabouts of Shri Lawrence between the dates April 30 and May 9, 1976, during which period, according to Shri Visveshwariah, he was reported to be absconding. The record does not disclose that Shri Lawrence was even asked about his day to day movements during this period. This is an elementary step in the investigation which in the normal course would have been taken. Even the information furnished by Shri Lawrence to the police that he was in Bangalore all along does not appear to have been verified by the investigating officer. Shri Lawrence was suspected of complicity in a conspiracy case, and such an enquiry would be imperative. Shri Visveshwariah in reply to the questions of the Commission, stated that no such enquiries were conducted. The Commission considers this significant omission as a very vital point which lends strong corroboration to the story of Shri Lawrence Fernandes and is destructive of the story of arrest of Shri Lawrence as narrated by Shri Visveshwariah. Absence of these elementary enquiries reinforces the conclusion that these enquiries were not undertaken because there was no need for the same—Shri Lawrence having been in police custody from May 1 onwards.

16.22 Shri Lawrence says that he had been searched on May 1, 1976, when he was brought from his house by the police officers to the COD office. Thereafter, he had again been searched on May 2, 1976, before he was lodged in the lock up at the police station Vayalikalaval, but the rosary that he was carrying was left with him at his request. On the night of May 3, 1976, he was lodged in Malleswaram Police Station at about 11.00 p.m. after his interrogation in the COD. On this occasion he was again searched and this time even his rosary was taken away by the Sub-Inspector of the Police Station, according to the version of Shri Lawrence.

16.23 According to the file of the case, which deals with the arrest of Shri Lawrence on May 10, 1976, Shri Lawrence was searched after he had been remanded to the police custody by the Magistrate at Davangere, and the following articles were recovered from his possession :—

- (1) a wrist watch ;
- (2) a cyclostyled unsigned letter dated March 18, 1976, purporting to be from Shri Madhu Limaye and addressed to Smt. Gandhi;
- (3) an inland letter dated April 29, 1976, addressed to Smt. Snehlata Reddy by one LESLIE of Madras;
- (4) an anonymous inland letter addressed to Shri Pattabhirama Reddy.

Shri Vishveshwariah said that he did not prepare any search memo. or Panchnama of the items recovered in the search of the person of Shri

Lawrence on May 10, 1976, because "this was neither necessary nor required under the rules". He prepared "a list of property sent to the Magistrate" on May 11, 1976, at COD, Bangalore, in respect of the articles seized from the person of Shri Lawrence on May 10, 1976, and sent the property to the concerned Magistrate at Bangalore. This list of property is dated May 11, 1976, and shows that the listed property was seized from Shri Lawrence on May 11, 1976, the date having been changed from May 10 to May 11, 1976. The list of property prepared by Shri Visveshwariah on May 11, 1976, at Bangalore also bears the signature of one Shri Subhash of the Civil Lines, Bangalore, as a Panch. Shri Visveshwariah could not explain why this signature of a Panch was obtained if the list of property was not a seizure memo. prepared at the time of recovery of the property from the person of Shri Lawrence. Enquiries revealed that no person of the name of Shri Subhash was residing at the address given in the list of property Shri Visveshwariah could not explain why a proper seizure memo. was not prepared of the articles seized from the person of Shri Lawrence after his arrest. Shri Visveshwariah was unable to explain how Shri Lawrence came by the two letters addressed to two different persons by third parties and whether he had made any effort to ascertain the relevant circumstances. In short, in the light of the evidence on record and in the absence of a satisfactory explanation by Shri Visveshwariah, the Commission is of the opinion that this story of arrest followed by the story of seizure of the four items of property seized from the person of Shri Lawrence on May 10 is a clumsy and concocted story. The Commission is of the opinion that Shri Lawrence was in the custody of the police from May 1 onwards and was searched on May 1, 1976. On May 10, this formal arrest was shown along with the four items of property purporting to have been recovered on his personal search.

16.24 The seizure of the rosary from Shri Lawrence on May 3, 1976, is a significant circumstance in proving the fact of his illegal custody. The list of property prepared by Shri Visveshwariah on May 11, 1976, showing the items allegedly recovered from Shri Lawrence after his formal arrest does not mention this rosary. This lends support to the story of Shri Lawrence that the rosary was taken away from him on May 3, 1976, while he was in police custody. On being brought to Bangalore from Davangere on May 11, 1976, Shri Lawrence was lodged in the lock up at Malleswaram Police Station, Bangalore. At that time, wearing apparel and other personal items of Shri Lawrence were entered in the Prison Search Register of PS Malleswaram, which also bears the signature of Shri Lawrence. The entry in this register shows that a pair of trousers, a shirt, a banian and an underwear belonging to Shri Lawrence had been taken charge of by the police on May 11, 1976. There is no mention of rosary in this entry also. In this regard, Shri Lawrence has stated that the rosary could not have been mentioned either in the list of property seized as prepared on May 11, 1976. or shown in the prison

search register on the same date as the rosary was not with him on that date and had been seized from him earlier on May 3, 1976 at Malleswaram Police Station. According to him, the rosary was returned to him on or about June 3, 1976 for which he had made a request to Shri Vittal Naik who had come to leave him at the Central Jail on May 20, 1976 on the termination of the Police remand. This fact gets corroboration from a petition of Shri Lawrence dated June 7, 1976, sent by him from the Central Prison, Bangalore, to the State Government in which he had asked for the return of his wrist watch and the purse seized from him on May 1, 1976 at COD and had mentioned that the rosary, which was taken away from him at the Police Station, Malleswaram, had already been returned to him about three days ago. A copy of this petition was sent to Shri Vittal Naik for his comments, and he endorsed that the rosary which was at PS Malleswaram had already been returned and that there was no purse with the police. The return of the rosary is thus confirmed by Shri Vittal Naik whereas the rosary is nowhere shown as seized in the police documents. This leads the Commission to the conclusion that the rosary had been seized from Shri Lawrence earlier during his illegal custody at PS Malleswaram and, therefore, could not be included in the list of property prepared by Shri Visveshwariah on May 11 after the formal arrest of Shri Lawrence. The rosary could also not be entered in the prison search register of PS Malleswaram on May 11, 1976 when Shri Lawrence was lodged there as the rosary was not on his person at that time. The facts relating to the rosary, supported by the evidence adduced, appear to the Commission as yet another very significant and decisive piece of evidence to prove that Shri Lawrence was in the custody of the police before May 10. In this regard the Commission is inclined to accept the statement of Shri Lawrence according to which the rosary was taken charge of from him on May 3, 1976, at Malleswaram Police Station.

16.25 Shri Lawrence has said that he was taken to the Bowring Hospital on May 14, 1976, by Shri Visveshwariah and Inspector Parameswarappa, where he was briefly examined by Dr. Gyanchand who had prescribed some medicines. This visit to the hospital has been denied by the two police officers. They have submitted that if, in fact, Shri Lawrence would have been taken to the hospital on the 14th from the police lock up at Malleswaram, where he was being kept on Police remand, the concerned register of the Police Station should have reflected this particular fact, and thus in the absence of any such entry in the register of the Police Station, Inspector Parameswarappa seemed to suggest that the contention of Shri Lawrence is not correct. From the Police Sentry Relief Book of Police Station Malleswaram it appears that there were no inmates in the police lock up on the 13th and 14th of May. The police officers, including Shri Vittal Naik were unable to explain why the register did not show the presence of Shri Lawrence in the lock up of Police Station Malleswaram on these dates. They pleaded that this might have been due to omission on the

part of the Police Station staff to make the necessary entries. On their own admission the records of the Police Station contain such serious omissions that it is difficult to rely on their authenticity

16.26 That Shri Lawrence could have been taken to the hospital on the 14th is suggested by an entry in the Bowring Hospital's OPD register containing the name of one Shri L. J. Fernandes on May 14, 1976. The initials as contained in this entry are different in so far as the initials of Shri Lawrence Fernandes are 'L.V.' as against 'L.J.' entered in the register. Even so, the Commission feels that it is too much of a coincidence that on the day Shri Lawrence is stated to have been taken to Bowring Hospital, another Fernandes with initials 'L.J.' should have visited the same hospital. Under the column 'Age' it has been indicated in the register that Shri L. J. Fernandes was of 30 years. Dr. Gyanchand has also denied that he examined Shri Lawrence on May 14. The Commission refrains from coming to any conclusion on this point.

16.27 On expiry of the period of police remand on May 20, 1976, Shri Lawrence was taken by Shri Vittal Naik to the Magistrate's court in Bangalore, where he was remanded to judicial custody up to May 28, 1976. Shri Lawrence Fernandes stated that he told the Magistrate that he had been detained in police custody since May 1, 1976, and that he had been brutally tortured by the COD staff and that he should be admitted to the hospital for treatment. The Magistrate has, however, only recorded in his remand order and remand warrant that Shri Lawrence had complained of assault by 'COD people' and that he should, therefore, be sent for medical examination and the medical report should be sent to the court. This fact is also recounted in the case diary dated May 20, 1976 of Shri Vittal Naik wherein he has also mentioned that he kept the senior officers informed of the allegations of Shri Lawrence made before the court. Shri Vittal Naik has stated that the allegations against the COD were made by Shri Lawrence to the court in his presence; and that he had informed only Shri Srinivasavulu, Dy. Commissioner of Police, regarding the allegations of Shri Lawrence and Shri Srinivasavulu in turn kept the other senior officers informed. Shri Vittal Naik did not conduct any inquiries into the allegations of Shri Lawrence although he has admitted that he was perturbed by the allegations made by Shri Lawrence. He did not protest before the court or refute the allegation of Shri Lawrence nor did he make any enquiry from Shri Lawrence himself in this regard. He admitted that Shri Lawrence was in his custody before he was produced before the Magistrate on May 20, 1976 but he had not seen if there were any injuries on his person. This statement of Shri Vittal Naik when viewed in the context of the medical report recorded after a medical examination that was done at about 5.30 p.m., on 20th by two doctors in the jails, casts serious doubts on its veracity and credibility.

16.28 Shri Srinivasavulu, Deputy Commissioner of Police, Law and Order, Bangalore City, has

confirmed that he received information from Shri Vittal Naik regarding the allegations made by Shri Lawrence before the court on May 20, 1976; that he passed on the information to Shri Krishnamurthy Raju, SP, COD, on the same day; that subsequently, he orally inquired from his officers regarding the allegations of Shri Lawrence and found that these were not correct; but he did not make any record of these enquiries and explanations of the officers nor did he prepare any report for the senior officers.

16.29 Shri Krishnamurthy Raju, S. P., Corps of Detectives, stated that he was informed by Shri Srinivasavulu about the allegations of assault made by Shri Lawrence against the COD; that he called the available officers concerned with the investigation of the explosion cases and made oral enquiries from them; that he was not sure which of the concerned officers were available for enquiries at that time; and that these officers denied the allegations and he accordingly informed his superior officer. Shri Raju admitted that his enquiries were oral, no statements were recorded, no explanations were called and no written report was prepared. He did not make any efforts to contact Shri Lawrence in the jail to ascertain more details of the assault on him by the COD. Though initially he stated that the allegations were not particularly serious, on questioning by the Commission he admitted that the allegations levelled by Shri Lawrence in the court were in fact serious. Even so, he did not make any formal enquiry into the matter.

16.30 Shri Vittal Naik took Shri Lawrence to the Central Jail, Bangalore, along with the Magistrate's remand order and warrant on May 20, 1976 and handed him over to the jail authority at the jail gate. The allegation of Shri Lawrence that he was driven to the condemned prisoners' cell in the same jeep in which he had been brought to the jail is corroborated by Shri Vittal Naik and Shri Chablani, Senior Supdt. of Central Jail, Bangalore. Shri Chablani has also stated that according to the rules, the prisoners are made to alight from the vehicles at the jail gate and from there they are made to walk to the places of their lodging. He has explained the fact of Shri Lawrence being driven to the cell by stating that, as informed by his Assistant Sudpt., Shri Lawrence resisted being taken into the jail and insisted on going to the hospital instead, and that to avoid unnecessary commotion in the jail, Shri Lawrence was not made to alight from the vehicle at the jail gate but was driven straight to the cell in the same jeep. The Commission finds it difficult to accept this plea. Firstly, it is difficult to believe that any prisoner who refuses to get down from the vehicle at the jail gate for any reason will get the benefit of being driven right upto the cell. Secondly, if the idea was to avoid commotion in the jail by driving him right upto the cell, then Shri Lawrence could have again resisted the attempts to persuade him to alight at the cell gate and the same commotion would have followed within the jail premises. Thus the only reason that could have compelled the authorities to deviate from the normal rules and

drive Shri Lawrence right upto the cell gate could have been his physical disability and his inability to walk from the gate upto the cell and that his physical condition would not be noticed by the other inmates of the jail.

16.31 The story of torture on Shri Lawrence in police custody is also borne out by the medical examination immediately on his admission to the jail on May 20, 1976. Dr. B. M. Narayana, District Surgeon, and Visiting Medical Officer of the Central Prison, Bangalore, and Dr. Sadashiva Reddy, Assistant Surgeon, attached to the Central Prison, Bangalore, were summoned by Shri Chablani, Senior Sudpt. of Jail on May 20, 1976 to come and examine Shri Lawrence immediately. It is stated in the examination report that Shri Lawrence complained of pain on the dorsum of left and right hands, both ankles, dorsum of the left foot and cleft of the buttocks near the rectum; he also complained of pain in lifting his left shoulder. The examination revealed that the dorsum of the left hand was tender and the bony protuberance on the base of 2nd metacarpal bone and the movements of both the wrists were painful. He was also found to have swelling and pitting oedema on the dorsum of the left foot. The movement of the left ankle and left toe were painful and tender. There was no swelling or discolouration over the buttocks but there was tenderness on the cleft of the buttocks near the rectum. Tenderness was also found in the movement of the left shoulder. The doctors prescribed analgesic drugs and advised further examination by an orthopaedic surgeon and a physician. Dr. Narayana has stated that Shri Lawrence could not stand up without the support of a stick and complained of severe pain when made to walk. To him, Shri Lawrence "appeared to be physically fearsome" and was in a very emotional and highly excited state of mind. Dr. Narayana has explained that the pain in the buttocks coupled with pain in the movement of other limbs was suspected to have been caused due to external violence, but there were no external marks of violence on the body. He explained that external marks of beating etc., would disappear in 2-3 or 4 days, especially the marks of beating on softer tissues of the buttocks. Dr. Narayana explained that in his opinion pitting oedema of the left foot could be due to a fracture, and that on that account he had advised X-ray and orthopaedic examination of Shri Lawrence on May 20, 1976. Dr. Narayana stated that he did not ask Shri Lawrence about the cause of these injuries nor did Shri Lawrence tell him the cause thereof, nor did Dr. Narayana ask him whether he had suffered from these injuries previously. Dr. Sadashiva Reddy has corroborated the statement of Dr. Narayana about the examination of Shri Lawrence.

16.32 Dr. Narayana further stated that he used to enquire of Shri Lawrence in the jail during his periodical visits. He learnt that Shri Lawrence was being sent to Victoria Hospital and also Bowring Hospital and Dental Wing for treatment, off and on, on the recommendation of Dr. Sadashiva Reddy and also other specialists. Dr. Sadashiva Reddy while corroborating the statement of Dr. Narayana

regarding the treatment of Shri Lawrence by specialists of various hospitals throughout the period of his stay in the jail has further stated that at the time of release of Shri Lawrence in March, 1977, he had examined him and found that he was still limping and used to complain of burning sensation during urination. Dr. Gyanchand who was a member of the Board of Specialists visiting the Bangalore Jail, has stated that on examination of Shri Lawrence on August 31, 1976 he had found swelling on his left foot and that he was being treated for fracture of the 3rd metatarsal bone. He attributed the swelling to post infective arthritis and gravitational oedema.

16.33 After his release from jail in March, 1977 Shri Lawrence was admitted to the All India Institute of Medical Sciences, New Delhi, for examination of his physical and mental condition. It was found that Shri Lawrence had a painful limp on the left side and there was painful limitation of movements of both hips, left ankle and 'subtalar joints' and tenderness along the outer border of the foot and over the left 5th metatarsal. The medical papers giving the details of various injuries etc., prepared by the All India Institute of Medical Sciences clearly indicate that Shri Lawrence had suffered a severe assault and that he needed both mental and physical rehabilitation.

16.34 Dr. B. M. Narayana and Dr. Sadashiva Reddy had advised on May 20, 1976 in the presence of Shri Chablani that Shri Lawrence should be further examined by a Physician and an Orthopaedic Surgeon. The jail records, however, show that no such action was taken by Shri Chablani on this advice for an appreciably long time. Dr. Sadashiva Reddy also made an entry in the jail medical diary on May 23, 1976 that Shri Lawrence should be escorted to the hospital for X-ray of left ankle joint, left hand and left shoulder to give a definite opinion "as required by the Magistrate". The records show that no action was taken by Shri Chablani on this advice either. In response to a letter dated May 22, 1976 written by Shri Chablani to Dr. Narayana regarding the examination of Shri Lawrence in connection with the medical report asked for by the Magistrate, Dr. Narayana wrote on May 25, 1976 referring to certain aspects of the physical condition of Shri Lawrence and suggesting that he stood in need of further examination by a physician. Dr. Sadashiva Reddy also made an entry in the Jail medical diary on May 26, 1976 that Shri Lawrence be examined by a physician. On May 27, 1976 he advised that Shri Lawrence be examined by an Orthopaedic Surgeon. On May 28, 1976 he again recommended that Shri Lawrence be sent to the Orthopaedic Department of the Victoria Hospital. But instead of sending Shri Lawrence to the hospital for X-ray as advised, Shri Chablani sent a letter on May 26, 1976 to the hospital authorities to send a Physician to examine Shri Lawrence in the jail. The Physician accordingly visited the jail the next day and he also opined that Shri Lawrence should be examined by an Orthopaedic Surgeon. Thereafter Shri Chablani wrote a letter to the hospital

authorities on May 28, 1976 to depute an Orthopaedic Surgeon to visit the jail for the purpose. There is no X-ray equipment in the jail hospital and obviously the orthopaedic surgeon's visit to the jail could serve little purpose.

16.35 Dr. Krishnappa, Assistant Orthopaedic Surgeon of Victoria Hospital, examined Shri Lawrence in jail on May 28, 1976. Dr. Krishnappa has stated that Shri Lawrence complained of pain on his left foot and left hand; that he noted that there was tenderness over the 5th metatarsal and 5th metacarpal bones; and suspecting fracture, he advised X-ray; he also stated that Shri Lawrence had complained to him that he—Shri Lawrence—had been beaten by lathis on May 1, 1976 and he had, therefore, incorporated this also in his written report on the examination of Shri Lawrence; that according to his recollection, Shri Lawrence had told him that the police had beaten him up. He confirmed that he had given a written report on the examination of Shri Lawrence which bears his signature. The report fully supports the testimony of Dr. Krishnappa.

16.36 According to the jail and hospital records, Shri Lawrence was taken to the Victoria Hospital, Bangalore, on May 29, 1976. Dr. T. R. Nagraj, Assistant Orthopaedic Surgeon of the Victoria Hospital, who examined Shri Lawrence in the hospital on May 29, 1976, stated that Shri Lawrence had complained to him of pain and swelling on the left foot and left wrist; that on examination, he suspected fractures and, therefore, advised X-ray of the left foot and left wrist; and that later he examined the X-ray film No. 7034 of Shri Lawrence taken on May 29, 1976 and with the concurrence of the Radiologist, he expressed the opinion that there was a crack fracture on the 3rd metatarsal bone of the left foot. Dr. Nagraj has further stated that plaster of paris slabs were accordingly applied to this region and immobilisation was continued along with analgesic. He again examined the same X-ray No. 7034 on November 27, 1977 at the instance of an officer of the Commission and he identified the X-ray to be the same as had been seen by him earlier. On re-examination of this X-ray, he still found that there was a hairline crack over the base of the 3rd metatarsal of the left foot. Dr. Nagraj confirmed that his earlier opinion on the X-ray No. 7034 was correct and that he had no reason to suspect it to be otherwise. He also stated that the swelling on the left foot of Shri Lawrence was due to external violence or any type of external injuries or a trauma. He opined that a fall could have also caused this injury. On examination of X-ray, he had found that the fracture was not very old but quite fresh—may be less than 10 days old.

16.37 Dr. T. V. Mariappa, Professor and Head of the Department of Orthopaedics, Victoria Hospital, Bangalore, stated that he examined Shri Lawrence on July 14, 1976 and also the X-ray of his left foot, pelvis and left hand taken on that day. He did not find any evidence of fracture in these films. He was aware at that time that an

X-ray of the left foot of Shri Lawrence had earlier been taken on May 29, 1976 and that Dr. Nagraj had found that there was a fracture. It was on this basis that he mentioned in his written report on the examination of the X-ray of July 14, 1976 that the crack fracture which was earlier seen by Dr. Nagraj might have healed by then. He further stated that such a healing was quite possible because more than six weeks had elapsed since the day of the first X-ray. Even on July 14, 1976, Dr. Mariappa found that there was swelling on the left foot of Shri Lawrence and, therefore, he advised him to wear crepe elastic bandage and take Tandril tablets and active exercises. X-ray No. 7034 of the left foot of Shri Lawrence taken on May 29, 1976 was shown to Dr. Mariappa during the hearing and Dr. Mariappa confirmed that he had not seen this X-ray earlier and that the examination does create a little doubt regarding the 3rd metatarsal base of the left foot but he could not say whether there was a crack fracture, as a final opinion had to be obtained from the Radiologist who examines the X-ray with a magnifying lens. He did not rule out a crack fracture or a 'linear fracture'. He further stated that if Dr. Nagraj, who is a qualified Orthopaedic Surgeon, had opined that there was a fracture, he would not disagree with him and would accept his advice as correct.

16.38 Dr. Gyanchand, Professor and Head of the Orthopaedics Department, Bangalore Medical College, and Bowring and Lady Curzon Hospital, Bangalore, has stated that Shri T. Srinivasavulu, the then DCP, Bangalore, had requested him and Dr. Bangappa, Radiologist, to give their opinion on X-ray No. 7034 of Shri Lawrence. On this request, he and Dr. Bangappa jointly examined the X-ray and gave a written report to the effect that there was no fracture seen in X-ray No. 7034. Dr. Gyanchand stated that the request for their opinion had been made by Srinivasavulu orally and that he did not make any record of this oral request in the hospital records. He knew that Dr. Nagraj and Dr. Mariappa were qualified Orthopaedic Surgeons, but he did not agree with their opinion that a fracture was disclosed in X-ray No. 7034. He stated that he had carried the usual visual examination of the X-ray film before he gave his opinion. Dr. Gyanchand has further stated that he examined X-ray film No. 7034 again at the time of giving his statement to the Commission's officer on February 17, 1978, and he found that there was no fracture on the left foot and he saw only "hairline like appearance" at the base of 3rd metatarsal bone which appeared to be an artefact and not a fracture. He found a "grave direct line" on the base of the 3rd metatarsal bone which was held by Dr. Bangappa to be a nail mark on the X-ray. Dr. Gyanchand refused to look at the X-ray again to give his opinion when requested by the Commission during the hearings. His plea was that it needed a proper illuminator to see an X-ray film. Dr. Bangappa, Professor of Radiology of the Bowring Hospital, has corroborated the statement of Dr. Gyanchand in material particulars. Both of them could not offer any satisfactory explanation as to why they expressed their opinion without any

formal request by the police authorities to that effect particularly when the X-ray had already been examined by a qualified Orthopaedic Surgeon of another hospital. They also admitted that they did not subject the X-ray film to any special examination. The Commission does not find any reason to give more weight to the report of Dr. Gyanchand than that of Dr. Nagraj. On the other hand, the Commission is inclined to accept the testimony of Dr. Krishnappa and Dr. Nagraj that there was a fracture of the left foot of Shri Lawrence since it is corroborated by the attendant symptoms of severe pain, swelling, inability to stand without support and inability to walk more than a step or two.

16.39 Shri Lawrence has also stated that he was kept for quite some time in a condemned prisoners' cell and although he was a MISA detenu from May 22, 1976 onwards, he was not allowed to mix with the other MISA detenues. Shri Chablani has stated that Shri Lawrence was kept in the corridor of the single cell barrack on medical advice. Dr. Sadashiva Reddy, while confirming that Shri Lawrence was kept in the corridor of the single cell barrack, denied that Shri Lawrence was lodged there on medical grounds. There is documentary evidence to show that Dr. Sadashiva Reddy had advised the Sr. Supdt. of Jail on June 16, 1976 that Shri Lawrence should be shifted from the cell premises to the barrack as he could then move over short distances. He had also advised that thereafter food should be supplied to Shri Lawrence in the barracks, as Plaster of Paris had been applied to his foot. Dr. Sadashiva Reddy has confirmed that the single cell barrack in which Shri Lawrence was lodged is also called the condemned prisoners' cell barrack and prisoners who are punished for violation of jail rules are sometimes lodged there. He confirmed that the barrack was not used for lodging sick prisoners and stated that Shri Lawrence was treated as an indoor patient since May 21, 1976 but he was not kept in a ward of the hospital and was kept in the single cell barrack. Dr. Sadashiva Reddy admitted that there is no provision in the Jail Manual to keep indoor patients in the jail barracks outside the hospital. Dr. B. M. Narayana has confirmed that few other cells in this single cell barrack were occupied and among the occupants there were "some manageable lunatics"; and confirmed that Shri Lawrence was an indoor patient but had not been kept in the hospital premises. He stated that this was the practice although there is nothing in the Jail Manual in support of such a practice.

16.40 Even when Shri Lawrence was admitted in the jail on the afternoon of May 20, 1976, he was in a bad physical condition and the doctors who attended on him immediately after his arrival in the jail had recommended orthopaedic examination in addition to an examination by a physician. On one pretext or the other, Shri Chablani evaded the issue and did not carry out the advice for the medical examination of Shri Lawrence by an orthopaedic surgeon till May 28, 1976 and thereby he evaded his responsibility to comply with the order of the court asking to be supplied a medical report on Shri Lawrence after appropriate examination. Even after

the 29th, when, in fact, he was X-rayed after he had been examined by an orthopaedic surgeon on 28th and an opinion had been obtained, the medical report asked for by the court was never submitted. Shri Chablani was not able to give a satisfactory explanation for this omission on his part. He tried to meet this question by suggesting that he did not send the report as the court had in the meantime closed the case, and referred to an order recorded by the court in that behalf. This record of the court was altogether in a different context and it related to the bail application of Shri Lawrence. This entry did not dispense with the obligation to submit the medical report which had been asked for by the court earlier and this entry could certainly not be interpreted to mean that the court had cancelled its earlier order. The Commission feels that Shri Chablani's explanation is most unsatisfactory and evasive, if not actually deceptive. It has also not been satisfactorily explained by Shri Chablani why Shri Lawrence was kept in the single cell barrack and that too in a corridor. Even though he stated in his defence that it was done on medical advice, the statement of Dr. Sadashiva Reddy who was the Jail doctor, does not support the statement of Shri Chablani. Shri Lawrence was kept in the cell corridor even after he had been detained under the MISA from May 22, 1976 onwards, and was also not allowed to mix with other detenus, till June 16. On the evidence, the conclusion is inevitable that Shri Lawrence was a physically disabled man when he came into the jail due to the torture and ill treatment by the police and that within the jail premises Shri Chablani colluded with the police by delaying the orthopaedic examination of Shri Lawrence as far as he could, and also in keeping him away from the other detenus for obvious reasons. The Commission holds Shri Chablani also responsible for not complying with the order of the court which had asked for a medical report on the physical condition of Shri Lawrence. The explanations given by Shri Chablani at different stages of the hearing of the Commission are not convincing.

16.41 Notices under rule 5(2)(a) of the Commissions of Inquiry Rules and summons under Section 8B of the Commissions of Inquiry Act were issued to Shri M.V.K. Raju, Superintendent of Police, Corps of Detectives, Shri H. S. Visveshwariah, Dy. Superintendent of Police, Corps of Detectives, Shri Vittal Naik, Assistant Commissioner of Police, Shri Parameswarappa, Inspector of Police and Shri Chablani, Senior Superintendent of Central Jail, Bangalore, in connection with the illegal detention, torture by police and maltreatment in jail of Shri Lawrence Fernandes. All the abovenamed officers except Shri Chablani filed petitions before this Commission and submitted their contention through their council orally as well as in writing that they could not be compelled to give evidence before the Commission as also to submit affidavits containing statements in their defence. These objections were overruled by the Commission. They, therefore, appeared before the Commission and were examined. Shri Chablani alone among these had filed a written statement in

response to the notice under Rule 5(2)(a) of the Commission of Inquiry Rules.

16.42 The Commission has taken into consideration the statements made by all the four police officers and Shri Chablani, and also the affidavits filed by them before the Santosh Commission which they had requested should be considered by this Commission. In the light of all these as also the evidence brought on record, the Commission sums up its findings as follows :

16.43 Shri Lawrence was in unlawful police custody from May 1, 1976 to May 9, 1976, during which period he was assaulted by the police which resulted in severe physical injuries to him. For this, the responsibility is of Shri Visveshwariah, Dy. Supdt. of Police and Inspector Parameswarappa. This is so because Shri Visveshwariah had taken him to Davangere on the 9th where his formal arrest was shown on the 10th May. Inspector Parameswarappa had taken him to the hospital on May 7, 1976 in the early hours of the morning.

16.44 From May 10 onwards when the formal arrest of Shri Lawrence was shown and he was remanded to police custody, he was kept in the Malleswaram Police Station which fell within the jurisdiction of Shri Vittal Naik, Assistant Commissioner of Police. Thereafter, he was taken to the hospital by Shri Parameswarappa on May 13. The evidence about Shri Lawrence Fernandes's visit to the hospital on May 14 is vague and, therefore, the benefit of doubt goes to the police officers. Shri Vittal Naik was present at the time that Shri Lawrence was produced before the Magistrate on May 20 at the end of the police remand and Shri Lawrence had complained to the Magistrate about assault on him by the COD people, in his presence. Even then Shri Vittal Naik took no steps to make purposeful enquiry although in the days immediately preceding the complaint he was in supervisory charge of the Police Station where Shri Lawrence had been lodged. He was under a duty to satisfy himself and the authorities that Shri Lawrence was not ill treated while he was in the custody of the Police Station which came within his jurisdiction. Shri Naik did not take any concrete steps in this regard. The Commission, therefore, is of the view that Shri Vittal Naik is as much responsible for all that happened to Shri Lawrence in the police custody and he must share responsibility with Shri Visveshwariah and Inspector Parameswarappa.

16.45 There is an aspect in this case which requires pointed comment. This is with regard to those case diaries that have been written in connection with the investigation of the cases relating to explosions in Karnataka. The relevant diaries are the case diaries Nos. 7 to 23 of Crime Nos. 49-50 of 1975 under the Explosive Substances Act purporting to be the record of investigation conducted in the year 1975; and the case diaries Nos. 24 to 28 and 48 to 58 are intended to be the record of investigation conducted in the year 1976. The case diary forms on which these diaries are written, were printed only in the year 1977. Obviously these case

diaries of the cases investigated in the year 1975 and 1976 could not be written in the forms printed in March 1977. The inference is inevitable that diaries in their original forms were found inconvenient for the purposes of the inquiry by the Commission and were rewritten on the forms printed in March 1977. The printing of these case diary forms in March 1977 has been testified to by the Director of Printing and Stationery, Government of Karnataka. Shri Vittal Naik, when confronted with these diaries, admitted that these diaries were not prepared at the time that the day to day investigations were carried on in the years 1975 and 1976 but were actually written only in the year 1977 on the basis of the notes that he used to maintain contemporaneously with the investigation. On being asked by the commission to produce those notes which formed the basis for the writing, of these belated case diaries, Shri Vittal Naik pleaded that some of those notes had already been destroyed. Shri Vittal Naik was not able to give a satisfactory explanation either for the late writing of the case diaries or for the destruction of the basic notes on which these diaries were subsequently written. At the first stage of the hearing he told the Commission that he wrote the case diaries on instructions from above, following the announcement in 1977 of the appointment of the Commission of Inquiry. The case diaries produced before the Commission lack authenticity since a number of them are not contemporaneous, and cannot be relied upon. Considering the importance and the evidentiary value of the case diaries in judicial proceedings and the reliance that is placed on them by the courts which deal with the guilt or innocence of individuals, the Commission has no doubt that the original diaries were replaced by fresh diaries, and the version of Shri Vittal Naik that he did not initially write the diaries and wrote them only when it was necessary to produce them before the Investigating Officer, is a false statement.

16.46 The Commission deems it necessary to draw the attention of the appropriate authorities to the conduct of Shri Vittal Naik which the Commission regards as reprehensible.

16.47 Shri Krishnamurthy Raju, Superintendent of Police, COD, was in charge of the entire operations and it was his officers who did the various illegal acts against Shri Lawrence. He in fact is alleged to have ordered them "to start the work" as stated by Shri Lawrence before the Commission. As the Superintendent in charge of COD, it was his responsibility to satisfy himself that the entries in the case diary for the different dates during which the investigation of the explosion cases was on, were factually correct and complete in all respects. It has been pointed out in discussing the case diaries recorded by Shri Visveshwariah relating to Shri Lawrence that Shri Krishnamurthy Raju either did not exercise any supervision or had deliberately slurred over his responsibility with regard to the various defects and defaults in the diary. It is difficult to appreciate how a Superintendent of Police in charge of the Corps of Detectives could have failed to get his staff to ascertain the day to day movements of Shri Lawrence between the 1st

and the 10th when it is alleged, Shri Lawrence was arrested, especially when the COD staff had come to the conclusion on April 30 that he was absconding from his house. It is observed that Shri Krishnamurthy Raju had deliberately ignored the various lapses in the investigation. The Commission is of the view that as Superintendent of Police he ought to take the full responsibility for everything that happened to Shri Lawrence while in his charge and on account of the activities of his officers. Even when he was told by the Deputy Commissioner of Police, Shri Srinivasavulu, about the allegations that Shri Lawrence had made before the Magistrate, Shri Raju did not take steps to institute a formal and factual enquiry. Though he says that he did enquire, he admits that it was all verbal enquiry. There is nothing on record to support or substantiate his contention. This is a grave omission on the part of a senior and responsible officer of the rank of Superintendent of Police, and more so in the context of the complaint made by Shri Lawrence before the Magistrate in the presence of Shri Vittal Naik that members of the COD had assaulted him.

16.48 Shri Krishnamurthy Raju's complicity comes out in yet another context. If what the police officers have asserted before the Commission is true with regard to Shri Lawrence being an absconder since April 30, 1976, the necessary and natural police action that should have followed at the level of the Superintendent of Police of the Corps of Detectives was to get Shri Lawrence's name included in the list of wanted persons published in the 'Crime and Occurrence Sheet' of the City Police. What was actually published was the fact of Shri Lawrence having been reported as a missing person. Presumably Shri Krishnamurthy Raju did not think it necessary to publish any item in the Crime and Occurrence Sheet regarding Shri Lawrence being an absconder because Shri Lawrence was already in custody and no further action was indicated in this regard.

16.49 All the four police officers named above are in the view of the Commission responsible for the illegal detention and torture of Shri Lawrence Fernandes, the primary responsibility resting squarely with Shri Krishnamurthy Raju, Superintendent of Police, Corps of Detectives, who was the seniormost among them and with whose knowledge and consent everything else appears to have taken place.

16.50 Shri Chablani colluded with the police officers in gaining time to let the injuries on the person of Shri Lawrence heal by postponing the medical examination of Shri Lawrence by an orthopaedic surgeon. He also failed to comply with the court's order to submit a medical report on Shri Lawrence. This was a deliberate effort on the part of Shri Chablani with a view to shield the delinquent police officers. Shri Chablani claimed that on medical advice he kept Shri Lawrence in the corridor of the single cell barrack; but the Commission feels that this was done deliberately with a view to keep Shri Lawrence away from the other MISA detenus with a view to keep all that happened to Shri Lawrence at the hands of the police a secret from the fellow detenus.

16.51 It may be pointed out that this case highlights not merely the illegal detention and torture of an individual by the police, but the subversion of an entire legal system including the judicial process by senior and responsible Government officers. Some of these officials had colluded with the police officials in an effort to ensure that the story of torture and illegal detention of Shri Lawrence Fernandes should be withheld from the public. Even assuming that the police officers were under very severe compulsions to secure the presence of Shri George Fernandes as he was suspected by the police to be responsible for some of the railway accidents due to suspected sabotage, and they may have believed that the interrogation of Shri Lawrence would yield the desired result, still they were not justified in doing what all they did to Shri Lawrence. They resorted to illegal detention and torture, and to cover up a series of illegal and indefensible acts, some of them fabricated public records, gave false testimony and otherwise acted in a manner unbecoming of the high and responsible offices they held. The concerned police officers, amongst whom there are some very senior and responsible officers, have by their conduct set a very poor example to the members of the Force which they represent. By glibly telling lies on oath, they have attempted to put a premium on perjury. By their conduct they have lowered themselves in the eyes of the public

generally and the Police Force in particular and have done more lasting damage to the credibility of the Force as a whole.

16.52 Highly placed officers, whether they belong to the administrative branch or the police branch are the custodians of the ideals of the Service to which they belong. They are leaders of those functioning under them. Since their actions and conduct reflect the actions and conduct of the Services to which they belong, they have an individual as well as a collective responsibility and their leadership is good or bad depending upon the example they set by their personal and official conduct and behaviour. When the leadership of the highly placed officers fails, it reflects directly upon those whom they represent and results in the erosion of discipline and performance of the rank and file. Any departure from the highest traditions of the class to which they belong, must therefore have a deleterious effect upon the collective performance of the Service. Examined in that light, the conduct of the police officers, as disclosed by the investigation of the Commission, is bound to leave a dark spot upon the reputation of the Service as an institution, which will last much longer than the time it may take for the injuries which Shri Lawrence Fernandes suffered to heal, and even the scars upon him to fade.

CHAPTER XVII

I. *Detention under MISA of Shri Murlidhar Dalmia, Chief Adviser of the Technological Institute of Textiles, Bhiwani (Haryana)*

17.1 Shri Murlidhar Dalmia son of Shri Ranglal Dalmia of Delhi, was the Chief Adviser of the Technological Institute of Textiles at Bhiwani, Haryana. On November 30, 1975, the District Magistrate, Bhiwani, issued the order of detention under Section 3(1)(a)(ii) of the Maintenance of Internal Security Act, 1971, read with Section 3(2) of the said Act, against Shri Dalmia. The detention of Shri M. D. Dalmia was ordered on the following grounds :—

- (a) He was a staunch follower of the RSS and after the ban on the organisation, he often criticised Smt. Indira Gandhi as well as the Government of India.
- (b) On October 16, 1975, he had visited Bhiwani and incited labourers and officers of the Technological Institute of Textiles, Bhiwani, against the emergency measures of the present Government.

17.2 The evidence led before the Commission, however, shows that Shri M. D. Dalmia was detained because of spite against him of Shri Bansilal, the then Chief Minister of Haryana. Some charges on non-existent grounds were fabricated to bring Shri Dalmia within the mischief of the MISA provisions.

17.3 Shri Bansilal, Chief Minister of Haryana, desired that Shri R. C. D. Kaushik, a Brahmin, should be removed from the office of Principal of the Technological Institute of Textiles, Bhiwani. Shri Dalmia has stated that this peremptory direction of Shri Bansilal was communicated to Shri K. K. Birla, Chairman of the Board of Directors of Birla Cotton Spinning and Weaving Mills, Delhi, and to Shri M. D. Dalmia through Shri K. M. Dabrial, a businessman of Delhi who was very close to Shri Bansilal. On receiving Shri Bansilal's instruction, Shri M. D. Dalmia told Shri Dabrial, who acted as a messenger of Shri Bansilal, the difficulties involved in transferring a highly qualified Principal like Shri Kaushik without his consent and in violation of the Rules of the Kurukshetra University to which T. I. T., Bhiwani was affiliated.

17.4 Shri M. D. Dalmia has stated before the Commission that this non-committal attitude exacerbated the annoyance of Shri Bansilal. He has said that after some time he received another message from Shri Bansilal again through Shri Dabrial that if the Principal Shri Kaushik was not removed from the T.I.T., Bhiwani, by 15th of

October, 1975, Shri Kaushik would be detained under the MISA. This arbitrary and capricious directive of Shri Bansilal compelled Shri Dalmia to give in and agree to Shri Bansilal's order to remove Shri Kaushik from the post of the Principal of the T.I.T. But the transfer of Shri Kaushik from the T.I.T. at that stage did not satisfy Shri Bansilal, and Shri Bansilal continued to nurse a grudge against him because Shri Bansilal felt that Shri Dalmia was responsible for the leakage of the news that the transfer of Shri Kaushik had taken place because of the pressure and intervention of Shri Bansilal. Sometime in November, 1975, Shri Dalmia received another message from Shri Bansilal again through Shri Dabrial that the latter was "extremely annoyed" with him and was planning to detain him under the MISA. In panic and fear Shri M. D. Dalmia approached Shri K. K. Birla, Chairman of the Board of Directors of the Birla Cotton, Spinning and Weaving Mills, Delhi, with a request to contact and persuade Shri Bansilal not to issue detention orders under the MISA against him.

17.5 Shri R. C. D. Kaushik has corroborated Shri Dalmia's version of the events leading to his ouster from the Technological Institute of Textiles, Bhiwani. He has stated that Shri Dalmia, Chairman of the T.I.T. conveyed to him Shri Bansilal's displeasure and the threat held out by Shri Bansilal to detain him under the MISA. Because of fear, he agreed to quit the Institute and to go wherever he was offered a job by the Birla House. He has stated that he had also approached Shri Banarsi Dass Gupta, the then Minister of Irrigation and Power of Haryana Government, and some other friends who has access to Shri Bansilal, with a request to prevail upon Shri Bansilal to allow him to return to the Institute. But he was told by Shri Banarsi Dass Gupta that Shri Bansilal was totally impervious to any such suggestion.

17.6 Shri K. K. Birla has stated that he came to know from Shri Dabrial and also from Shri M. D. Dalmia that Shri Bansilal was contemplating to arrest Shri Dalmia under MISA and the cause of Shri Bansilal's anger against Shri Dalmia was his impression that Shri Dalmia was responsible for letting it be known that Shri Kaushik's transfer from T.I.T., Bhiwani was at the instance of Shri Bansilal. In an attempt to mollify Shri Bansilal, Shri Birla met him on three or four occasions once in Chandigarh and on other occasions in Delhi and attempted to prevail upon him against taking the extreme step of issuing MISA detention order against Shri Dalmia. Shri Birla stated that during these brief meetings (duration of each meeting was between 15 to 20 minutes), he tried to pacify Shri Bansilal by telling him that Shri Dalmia, a good man, was one of his

admirers and hence he should be spared the agony of detention under MISA; but these mediatory efforts did not succeed, and Shri Bansilal refused to relent. With the object of appeasing the wrath of Shri Bansilal, the Management of Birla Cotton, Spinning and Weaving Mills went to the extent of asking Shri M. D. Dalmia to tender his resignation. Shri M. D. Dalmia has described it as "retirement from service under duress".

17.7 The District authorities of Bhiwani passed an order for detention of Shri M. D. Dalmia on November 30, 1975. The detention order was, however, based upon trumped-up charges and the grounds of detention fail to stand the test of scrutiny. Shri Y. S. Nakai, the then Superintendent of Police, Bhiwani, has stated before the Commission that he had received telephonic instruction either from the Chief Minister's Secretariat or from DIG, CID, to initiate steps for the detention of Shri Dalmia under MISA. He, accordingly, gave guidelines to the District CID Inspector, Shri Parmanand, to prepare a report on the basis of which Shri Dalmia could be detained under the MISA. Shri Nakai has admitted that there were no records with the police regarding Shri Dalmia's links with RSS or about his anti-Government activities. A report against him had to be prepared in view of the instruction he had received from "the higher authorities". Shri Nakai has further stated that during those days of the emergency it was impossible for him not to fall in line and disregard the instructions received from above.

17.8 The District CID Inspector, Shri Parmanand, who prepared the report on the instruction of the Superintendent of Police, admitted that the local CID did not have any information about the anti-Government and the pro-RSS activities of Shri M. D. Dalmia and report submitted by him at the instance of the SP was completely concocted. He added that SP, Shri Nakai, had told him that the order to detain Shri Dalmia had come from the higher-ups and he explained that by 'higher-up' the SP was meaning Shri Bansilal. Shri Parmanand admitted that his report, which deprived a person of his liberty, had to be based on "false and concocted materials" as detention of Shri Dalmia under the MISA would not have been otherwise possible. He had no option at that time and refusal on his part would have cost him his job.

17.9 The District Magistrate, Bhiwani, Shri R. S. Verma, received the report of the Superintendent of Police on November 30, 1975, and promptly issued orders on the same day for detention of Shri M. D. Dalmia under the MISA. Shri R. S. Verma has stated that he made no effort to satisfy himself on the veracity or the adequacy of the grounds of detention given to him by the SP and mechanically passed the detention order as he knew that this was desired by the State Government. He also ruefully admitted that at that time no officer had the courage to question any instruction coming from the State Government.

17.10 Though the order against Shri M. D. Dalmia was passed on November 30, 1975, his arrest could not immediately be effected. On February 3, 1976, Shri M. D. Dalmia filed a petition in the Delhi High Court for a writ challenging the detention order. The Delhi High Court stayed the operation of the Detention Order on the ground that it contravened Section 16-A(3) of the MISA. The Haryana State Government revoked the detention order, dated November 30, 1975, because it suffered from technical infirmities and passed a fresh order on February 16, 1976, but this order also could not be served because Shri M. D. Dalmia amended the writ petition after coming to know of the subsequent order of detention and the High Court continued the stay already granted. Meanwhile, Shri Dalmia's relations as well as the seniormost executives of the Birla House started making frantic efforts at various levels for cancellation of the detention order of Shri Dalmia. Smt. Anar Devi (aged 67 years), Shri M. D. Dalmia's wife, was able to obtain an interview with Smt. Indira Gandhi on April 29, 1976, and requested her to intervene in this case and get the detention order against her husband cancelled. There was no response from Smt. Gandhi.

17.11 Shri D. P. Mandelia, one of the seniormost Executives of the Birla House, has stated that he made efforts at various levels for the release of Shri Dalmia and for this purpose met the then Cabinet Ministers of the Government of India like Shri Gokhale, Shri Brahmananda Reddy, Shri Y. B. Chavan, Shri Jagjivan Ram, Shri K. C. Pant and others and requested them to extend their help and persuade Shri Bansilal to cancel the detention order against Shri Dalmia. But, according to him, none dared render any help because Shri Bansilal was very powerful in those days. Shri Gokhale informed him that he had spoken to Smt. Gandhi about the case and she had noted down the particulars. But ultimately, nothing was done by her to set things right. Shri Mandelia has further added that he was informed by Shri K. K. Birla that Shri Bansilal was displeased at his lobbying for the release of Shri Dalmia and was thinking in terms of arresting him. He also received similar messages from his friends and relatives advising him to desist from helping Shri Dalmia.

17.12 Shri Dalmia had sent an appeal on December 18, 1975, to the Prime Minister of India in which he disowned his association with the political parties and requested that his detention order should be examined by some impartial authority. The Ministry of Home Affairs had asked the Central Intelligence Bureau to make an objective assessment of the political involvement and activities of Shri Dalmia *vis-a-vis* RSS and the emergency. The IB in its reply to the MHA clearly mentioned that Shri Dalmia had not come to its notice for participation in RSS, BJS or for any anti-national activities. After receiving IB's report, the MHA *vide* its letter, dated March 4, 1976, informed Haryana Government that the Central Government felt that the detention of Shri M. D. Dalmia was

not justifiable. In spite of it, the Haryana Government took no steps to cancel the detention order. Haryana Police also made clumsy efforts to arrest Shri Dalmia from the premises of the Delhi High Court, despite the stay order, but failed because of the protest and intervention of the public present there.

17.13 Subsequently, Shri M. D. Dalmia's writ petition against the detention under MISA had to be withdrawn in view of the Supreme Court's decision in a Habeas Corpus case that no petition for a writ against action under the MISA would be entertained by the High Court even if such action was arbitrary and *maia fide*. He then surrendered before the police on May 3, 1976, and was transferred to Hissar Jail in Haryana. He had to stay in prison for one month and 23 days and was then released on parole on June 14, 1976. This parole was granted to him by the Haryana Government only when Shri K. K. Birla met Shri Bansilal, who had by then become the Union Defence Minister, and successfully pleaded with him for granting parole to Shri Dalmia. Shri Bansilal ultimately relented and agreed to grant parole to Shri Dalmia on conditions that Shri Dalmia would vacate the house that he was occupying in the premises of Birla Cotton, Spinning & Weaving Mills and that he would be away from Delhi for six months. Shri K. K. Birla, who negotiated this release of Shri Dalmia on parole, could not explain the reasons as to why Shri Bansilal imposed these two extraordinary conditions. Shri Dalmia continued to remain on parole from June 14, 1976, till his detention order was cancelled in February, 1977, along with detention orders of other detenus under MISA.

17.14 Shri Bansilal was served with a notice under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972, and was summoned under Section 8B of the Commissions of Inquiry Act. He appeared before the Commission and made a long statement questioning the procedure adopted by the Commission for conducting the inquiry and expressed his inability to state anything on oath as he was not legally and constitutionally bound to do so. On the subject-matter of the cases related to him, he did not furnish any information to the Commission. The Commission has preferred a complaint under Sections 178/179 of the Indian Penal Code against Shri Bansilal in the court.

17.15 This case highlights the highhanded and arbitrary conduct of the Chief Minister, Shri Bansilal in Haryana during the emergency. Once he desired that Shri Dalmia should be detained, the other functionaries in the Government did the rest—fabricated records and concocted grounds to justify an unjustifiable detention order. The Chief Minister employed the authority and resources of the Government to wreak his private grudge against a citizen in an unprincipled and unscrupulous manner, and the courts felt compelled to hold that they had no power to grant redress. Shri M. D. Dalmia could get no relief save by approaching Shri Bansilal through his business associates. The only

fault of Shri Dalmia was that he had for some time declined to fall in line with the demand of Shri Bansilal, conveyed to him through the intermediaries, that the Principal of the T.I.T., Bhiwani should be removed from his office because of the personal grudge that Shri Bansilal nursed against the Principal. Once this was accomplished, though belatedly, he wanted to teach Shri Dalmia a lesson in the belief that Shri Dalmia must have been responsible for letting known the circumstances under which the Principal was removed from his office and the identity of the man behind that move. Not all the approaches that Shri Dalmia had, with his standing and position in the Birla House, could succeed in averting his eventual arrest and actual imprisonment. The Cabinet Ministers pleaded their helplessness to do anything against the express wishes of Shri Bansilal. Not even the Prime Minister intervened. The advice of the Home Ministry based on the report of the Intelligence Bureau pointing out that the detention of Shri Dalmia was unjustified, failed to evoke the expected response from the Haryana Government.

17.16 Shri Bansilal has not availed himself of the opportunity to appear before the Commission and explain his conduct. A number of witnesses have been examined who have unanimously deposed to his highhanded and arbitrary behaviour. There is no reason for not accepting their testimony.

17.17 Shri Bansilal, even though he had ceased to be the Chief Minister of Haryana and had become the Defence Minister in the Government of India, continued to exercise the same authority and power over the affairs of the State of Haryana as he had done when he was the Chief Minister. It is not, otherwise, possible to explain why his consent alone mattered to get the parole for Shri Dalmia and that too contingent on Shri Dalmia fulfilling the two conditions stipulated by Shri Bansilal. The power that Shri Bansilal exercised and the manner in which he wielded it, would rank him with medieval despots. Shri Bansilal had grossly misused his position and abused his authority as the Chief Minister in ordering the detention of Shri Dalmia. He continued to abuse his position even after he had ceased to be the Chief Minister and become the Defence Minister of the Government of India. The Commission has not come by even one circumstance which could be stated in extenuation of the arbitrary and unscrupulous conduct of Shri Bansilal who secured the removal of Shri Kaushik from the post of Principal of T.I.T. and incarceration of Shri M. D. Dalmia to feed his personal vanity that no one could defy his slightest wish and whoever had the misfortune to cross his path must suffer the consequences.

II. Detention of Shri M. L. Kak, special correspondent of the Tribune

17.18 Shri M. L. Kak, son of Shri Kanshi Nath Kak, was posted as the Staff Correspondent of the

Tribune at Hissar from May, 1967. On June 26, 1975, Shri Kak was taken into custody and detained under an order purported to be passed in exercise of authority under Section 3(1)(a)(ii) of the Maintenance of Internal Security Act, 1971. A declaration under Section 16A(iii) of the MISA was also issued by the District Magistrate, Hissar, to the effect that the detention of Shri Kak was necessary for effectively dealing with the emergency. In the grounds of detention served on Shri Kak, it was mentioned that he, an active member of the RSS, was indulging in violent and false propaganda against the Government and inciting the general public to overthrow the Central and State Governments by use of force. Shri Kak was also accused of participating in a closed-door meeting of the non-CPI Opposition parties at Hissar on June 25, 1975, in which it was decided to create confusion, panic and chaos in the country, which would ultimately compel the Prime Minister, Smt. Indira Gandhi, to step down from her office.

17.19 Shri Kak's detention was a part of the large-scale MISA detention operations that had been mounted all over Haryana on the night of June 25/26, 1975, at the instance of the Chief Minister, Shri Bansi Lal, Shri S. S. Bajwa, Inspector General of Police, has stated that on the night of June 25, 1975, he was summoned by Shri S. D. Bhambri, Chief Secretary-cum-Home Secretary, Government of Haryana, at the residence of the Chief Minister, Shri Bansi Lal, at Chandigarh. According to Shri Bajwa, the Chief Minister dictated to him the name of about 40 persons to be detained under MISA and asked him to convey these names to the respective Superintendents of Police and District Magistrates with the instruction that these detentions must be effected before day-break. In pursuance of this unequivocal instruction of the Chief Minister, he communicated these names, along with other particulars, to the respective Superintendents of Police and District Magistrates. Shri Bajwa has stated that though he could not remember if Shri M. L. Kak's name was included in the list dictated to him by Shri Bansi Lal, he has no reason to disbelieve the testimony of the Superintendent of Police, Hissar that the name of Shri M. L. Kak was included in the list of persons to be arrested at Hissar.

17.20 Shri M. L. Kak has explained before the Commission the reasons, why Shri Bansi Lal, the Chief Minister of Haryana, nursed a grudge against him. He has said that he incurred the dislike of Shri Bansi Lal because the latter never appreciated his objective reporting and harboured a feeling that he was reporting in his columns against the Government. Shri Kak has claimed that he was the first journalist in Haryana to bring to light the unsavoury Riwasa episode which further infuriated Shri Bansi Lal. Shri Kak has also mentioned that Shri Bansi Lal had approached the then News Editor of Tribune a number of times for transfer of Shri Kak from Hissar. Shri Kak has emphatically denied his association, whatsoever, with the RSS and repudiated the allegation that he was present in a closed-door meeting of the opposition parties on June 25,

1975, in the office of the BLD at Hissar as a 'big lie'.

17.21 Shri L. M. Jain, the then District Magistrate, Hissar, and Shri Kalyan Rudra, the then Superintendent of Police, Hissar, have affirmed before the Commission that Shri Kak's name figured in the list of persons, whose names were conveyed by IGP on the night of June 25/26, 1975, who were to be detained under the MISA. Shri L. M. Jain has stated that in the afternoon of June 25, 1975, he received a telephonic call from the Principal Secretary to the then Chief Minister of Haryana, Shri S. K. Misra, directing him not to leave the Headquarters and to keep the telephone by his bed-side at night as some important instruction was to be conveyed to him during the night. Shri Jain has further said that at about 0200 hours on June 26, 1975, he went to the police control room, on receiving a message, and found that Shri Kalyan Rudra, SSP, Hissar and an ASI of the control room, were already present there. According to Shri Jain, Shri S. S. Bajwa, contacted the SSP, Hissar over the radio wireless and directed him to note down the names of persons, whose detention under the MISA was desired by the State Government; it was also made clear by Shri Bajwa that the order had to be carried out before day-break. Shri Jain has deposed that after receiving IG's instruction, he had a discussion with Shri Rudra, who told him that "he would communicate the detailed grounds of detention in the form of a recommendatory letter shortly, but in the meantime on the basis of the gist of information regarding the grounds of detention, told to me orally, he wanted that a detention order in respect of Shri Kak may be given to him so that Government orders regarding his detention could be complied with. I acceded to his request". Shri Jain has sought to explain that in view of the grave situation in the country because of the declaration of emergency, and the mandatory instruction of the State Government to promptly detain a number of persons, he issued the detention order in respect of Shri Kak on the oral information conveyed by the SSP without verification. He contended that he did not seek to verify the information communicated to him by Shri Rudra as he had no reason to believe that what Shri Rudra was saying was not true, and he categorically denied that Shri Rudra had ever told him, before obtaining the detention orders, or at any time thereafter, that sufficient material for detention of Shri M. L. Kak was not available and will have to be concocted.

17.22 Shri Kalyan Rudra, the then SSP, Hissar, struck a different note. He admitted that there were no materials against Shri Kak except that he was generally critical of the then Government in his reporting, and that he brought to the notice of the District Magistrate the crucial fact that sufficient materials to warrant detention under MISA against Shri Kak did not exist. Shri Rudra has said that after discussions with the District Magistrate it was decided that detention orders would be issued first and the grounds of detention in the form of a recommendatory letter would be sent to him subsequently. Shri Rudra also admitted that

the grounds of detention contained fabricated materials with regard to Shri Kak's association with the KSS and his participation in the close-door meeting in the office of the BLD at Hissar on June 25. Shri Rudra has further stated that it was impossible for them to protest at that time because the IGP had made it clear that these were specific Government instructions and 'no deviation was to be allowed'. According to Shri Rudra, one copy of the grounds of detention in all these detention cases was sent to the District Magistrate directly and the other copy was sent to the office of the DIG, CID at Chandigarh for "vetting". The Public Prosecutor Shri Pyare Lal went to Chandigarh with the materials and returned next day after getting them "vetted" from the office of the DIG, CID.

17.23 Shri Rudra's statement before the Commission that there were no adverse materials against Shri M. L. Kak and the District Magistrate was apprised of this fact by him on the night of June 25/26, 1975, has been corroborated by the evidence of Shri Balbir Singh, the then Deputy Superintendent of Police, Headquarters, Hissar; of Shri Pyare Lal, Public Prosecutor, Hissar; and of Shri Babu Ram, the then ASI Security posted at Hissar. Both Shri Balbir Singh and Shri Pyare Lal have stated that on receipt of instruction from Shri Bajwa, Shri Rudra wanted to know from the Security ASI, Hissar, as to whether there were materials available on police records against Shri Kak and Shri Babu Ram, ASI, Security, after scrutinising the police records, told him that there were no materials to justify Shri Kak's detention under MISA and the SSP in turn conveyed this information to the District Magistrate.

17.24 Smt. Shyama Kak, wife of Shri M. L. Kak, had sent a representation on June 27, 1976, to the then Prime Minister of India, Smt. Indira Gandhi, requesting for the release of her husband on the ground that he had never been an active RSS and BJS worker. The Government of India referred her representation to the State Government for consideration, but the State Government did not agree to the release of Shri M. L. Kak. Though Shri Kak had been on parole since September 30, 1975, his detention order was revoked only on November 26, 1976. Meanwhile, the Ministry of Home Affairs had asked the Intelligence Bureau to report on the tenability of the detention of Shri Kak and was informed by the Bureau that "Shri Kak had not come to notice for taking part in any activity of BJS and RSS. Though he holds pro-BJS leanings, he was not a member of any political party before his detention. He was, however, a critic of the then Chief Minister of Haryana".

17.25 In the MHA file dealing with the detention of Shri Kak, the then Joint Secretary (I.S.) had to note, "This appears to be a case of misuse of MISA".

17.26 In this case, notices under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules as well as under Section 8B of the Commissions of Inquiry Act were issued to Shri Bansilal, the then Chief Minister, Haryana and Shri L. M. Jain, the then District Magistrate, Hissar. Shri Bansilal raised objections regarding procedures adopted by the Commission. He filed no statement under Rule 5(2)(a) of the Commissions of Inquiry Rules, and refused to make any statement on oath. A complaint under Sections 178/179 of the Indian Penal Code has been forwarded to the Chief Metropolitan Magistrate, Delhi, against him.

17.27 In his reply to the notice under Rule 5(2)(a), Shri L. M. Jain has repeated his earlier version and reiterated that he issued the detention order against Shri M. L. Kak on the oral version of the SSP who told him that there were materials in the police records to warrant detention of Shri Kak under the provisions of the MISA and subsequently sent a written report.

17.28 In the opinion of the Commission, Shri Rudra's version seems more truthful and correct than that of Shri Jain. Both Shri Jain and Shri Rudra have stated that on the fateful dawn of June 26, they received unequivocal instruction from the Chief Minister through IGP, Shri Bajwa, to detain a number of persons including Shri M. L. Kak of Hissar District and report compliance by day-break. Both of them knew that the order had to be carried out, regardless of availability of adverse materials against these persons. It is difficult to believe that Shri Rudra would have spoken on the night of June 25/26, to Shri Jain about RSS links of Shri M. L. Kak and his participation in the closed-door meeting of the opposition parties on June 25, when there was nothing on records of the Police to show Shri Kak's links with the RSS. Because of the illness of Shri Kak, as stated by Shri Rudra, it would not have been possible for Shri M. L. Kak to have attended any meeting on the night of June 25. The grounds of detention were admittedly fabricated. This must have been known to the District Magistrate. For the District Magistrate to take the position before the Commission that he was told verbally by the SSP about the grounds of detention, which he believed to be true and genuine, and he based his detention orders on the version of the SSP is an attempt to evade his responsibility by shifting the blame on to Shri Rudra.

17.29 The stand taken by Shri L. M. Jain that he issued the detention order against Shri M. L. Kak only after satisfying himself personally about the grounds for detention does not appear to be consistent with the facts of the situation. It was not possible for any detaining authorities to satisfy themselves within the short time that was available to them for effecting the detentions about the genuineness of the grounds, except to a small extent by interrogating the police authorities concerned, who were called upon to furnish the grounds for detention. Almost all the detaining authorities who had appeared before the Commission had accepted

the fact that they did not make any attempt to satisfy themselves because they were left with no choice in the matter. But Shri Jain has claimed that he performed his duties conscientiously. The orders had come from the Chief Minister through Shri Bajwa and they had to carry them out as expeditiously as possible. Shri Jain says that he asked Shri Rudra, and he was informed by the latter that there was information against Shri Kak, and genuinely believing that materials existed on the police records, he passed an order of detention after satisfying himself about the necessity and propriety of detention. The conduct of Shri Jain, however, belies that claim. He claims that he made oral enquiries and he was orally informed by Shri Rudra about the existence of materials against Shri Kak. If Shri Jain was conscious of the requirements of law, and the nature of the duty to be performed by him, it is surprising that he did not make any note in writing about the enquiry made by him of Shri Rudra and the information given to him. Shri Jain could have asked Shri Rudra to give his statement in writing, or Shri Jain could have asked questions orally and recorded the statements in writing. It could not have taken much time. Shri Jain admits that he knew that the State Government desired several persons including Shri Kak to be detained. He was informed that emergency had been declared. If he still wanted to perform his duties strictly according to law, there was nothing to prevent him from taking the minimum precaution to record the materials on which he was satisfied. The Commission has no doubt that the story of Shri Jain is false.

17.30 The Superintendent of Police who furnished the grounds, had accepted the fact that he had concocted the grounds. Shri Jain, in asserting that the SP had verbally told him the grounds that were available against Shri Kak, which he believed to be true, is trying to make himself appear as one who had done nothing wrong insofar as his action was based on the grounds furnished by the Police which he thought to be genuine. Shri L. M. Jain knew Shri Kak as a Correspondent of the "Tribune", and on his own admission, he had heard nothing against him before 2.30 a.m. on the night between June 25 and 26 about his prejudicial activities or even about his membership of the RSS. Under the circumstances, therefore, for him to be faced with the type of charges that find mention as grounds for detention of Shri Kak as stated by Shri Jain, and for him not to have taken a single step towards ascertaining the genuineness of the charges, appears to the Commission a false story invented to explain his conduct.

17.31 The Commission believes that the SSP and the District Magistrate decided to detain Shri Kak pursuant to the instructions of the IGP and thereafter the SSP felt constrained to concoct materials, which would serve as grounds for detention. In his anxiety to save himself, Shri L. M. Jain seems to have taken recourse to shifting the responsibility on the others. The Commission feels that this officer who was holding the important office of

the District Magistrate was a party, under the compulsion of circumstances prevailing at that time, to patently illegal acts, had attempted to shirk his responsibility and has in that process invented a story, which cannot be accepted. By his unbecoming conduct, he has done a disservice to the traditions of the Service and the legitimate expectations that the people and the Government have in the Service to which he belongs.

III. Harassment and detention of CDR. (Retd.) Pritam Dutta of Rohtak

17.32 Commander Pritam Dutta served in the Indian Navy in various capacities for 23 years. After his retirement from service, he settled down in Rohtak and started wholesale liquor business, in the name of Messrs. Duttom Enterprises, of which he was the sole proprietor. He also obtained wholesale distribution rights for the State of Haryana of the products of Khoday's, a well-known liquor company of Bangalore. Cdr. Dutta was very successful in his business. Cdr. Dutta's troubles started sometime in 1974, when he declined to allot a sub-agency of Khoday's products for Bhiwani and the neighbouring districts to one Shri Ram Chander of Bhiwani, "who was close to Shri Bansi Lal, Chief Minister of Haryana".

17.33 Cdr. Dutta has stated that sometime in 1974, Shri Ram Chander of Bhiwani, a milk vendor, who had started business of dealing in liquor, approached him a number of occasions with a request for allotting him sub-agency of Khoday's products for Bhiwani and adjacent districts. Cdr. Dutta turned down this request as he considered Shri Ram Chander to be unreliable and a dangerous man, who can "hit below the belt". This refusal, according to him, infuriated Shri Ram Chander, who threatened him and told him emphatically that he would somehow get the sub-agency.

17.34 Shri A. N. Mathur, ex-Deputy Commissioner, Rohtak has stated that sometime during November 1974, Shri R. C. Mehtani, OSD to the Chief Minister, Shri Bansi Lal, intimated him on telephone that Cdr. Dutta was an undesirable person against whom the Chief Minister had received a number of reports. Shri Mathur tried to find out from the Senior Superintendent of Police, Shri Mohan if there was anything adverse against Cdr. Dutta and received a reply in the negative. Shri A. N. Mathur has also mentioned that when Cdr. Dutta met him in some other connection, he apprised him of the Chief Minister's hostile attitude towards him and was informed by Cdr. Dutta that this had its genesis in his refusal to grant liquor dealership to one Shri Ram Chander. Shri Mathur advised Cdr. Dutta to tread warily and to be careful in dealing with people at high places.

17.35 Cdr. Dutta was a respectable businessman and a leading citizen of Rohtak and a member of the Soldiers, Sailors and Airmen's Board of

District Rohtak. He was sought to be humiliated by summary removal of his name from the membership of the DSS&A Board. Shri N. K. Garg, who was posted as the Deputy Commissioner, Rohtak, from December 16, 1974 to August 30, 1975, has stated that sometime in the first week of January 1975, Shri R. C. Mehtani informed him on telephone that the Chief Minister Shri Bansi Lal was 'extremely annoyed' with Cdr. Dutta and desired that his name should be removed from the membership of the DSS&A Board. Shri Garg has mentioned that though Shri Mehtani assigned no reasons as to why the Chief Minister wanted this peremptory step to be taken, he carried out the Chief Minister's order. In his capacity as the *ex-officio* President of the DSS&A Board, he removed Cdr. Dutta's name from the membership of the Board. Shri Garg has admitted before the Commission that he considered the orders conveyed by Shri Mehtani as orders of the Chief Minister. Shri Garg also availed of this occasion to inform Cdr. Dutta of the Chief Minister's growing annoyance with him and advised him to patch up his differences with the Chief Minister and Shri Mehtani.

17.36 From a perusal of the Constitution of the DSS&A Board, it is seen that under clause (5) of the Constitution, the President of the Board is authorised to remove the name of any member of the Board, only when the latter is held guilty of improper, scandalous and disloyal conduct. Shri Garg has admitted that no improper conduct on the part of Cdr. Dutta had ever come to his notice. This summary removal of the name of Cdr. Dutta from the membership of the Board by the Deputy Commissioner at the instance of the Chief Minister was not only improper but violative of the Constitution of the DSS&A Board.

17.37 Shri Garg has also deposed that after the declaration of the emergency, Shri Mehtani spoke to him on the telephone a number of times and communicated to him the Chief Minister's desire that Cdr. Dutta should be detained under the MISA. He, however, expressed his inability to carry out this direction, as after discussion with the Senior Superintendent of Police, Shri Mohan, he had found that there were no grounds to justify Cdr. Dutta's detention under MISA. Shri Garg feels that this refusal to comply with Shri Bansi Lal's direction was responsible for his abrupt transfer from the District on August 30, 1975.

17.38 Efforts were also set afoot to further harass Cdr. Dutta and force him out of his business. Shri J. K. Duggal, Excise and Taxation Commissioner, Haryana, has stated that sometime in the first week of November 1975, he was told by Shri Sham Chand, the then Minister of Excise and Taxation, Haryana, that Shri Bansi Lal had desired that a raid should be immediately conducted on the business premises of Cdr. Dutta at Rohtak. Shri Duggal admitted that though there was no information with him of the commission of any irregularities or malpractices by Cdr. Dutta, he had to suspend his judgment and organise the raid because it had been desired by the Chief Minister.

He, in his turn, directed Shri O. P. Taneja, Deputy Excise and Taxation Commissioner, to conduct the raid at Rohtak. Shri Duggal has further stated that he did not take the minimum precaution of writing down the order of the Minister, because this was contrary to the practice prevailing at that time.

17.39 Shri O. P. Taneja, Deputy Excise and Taxation Commissioner, has given the details of the raid conducted in the business premises of Cdr. Dutta and its aftermath. He has stated that he was asked by Shri J. K. Duggal to organise raids on the business premises of Cdr. Dutta at Rohtak because that was desired by the Chief Minister; and he, in turn, without enquiring as to why the raid was to be conducted and what irregularities Cdr. Dutta had committed, went into action and took steps to conduct the raid at Rohtak sometime in the afternoon of November 5, 1975. According to Shri Taneja, during the raid some minor discrepancies like shortage of 19 beer bottles, etc., were detected, and he personally took some samples of liquor collected from the business premises of Cdr. Dutta to the Chemical Examiner's office at Chandigarh for analysis and opinion. He also issued a show-cause notice to Cdr. Dutta for cancellation of his licence, and after receipt of the reply to the show-cause notice, on November 24, 1975, passed an order on the same day cancelling the licence of Cdr. Dutta. Shri Taneja has also admitted that he followed this up by issuing instruction on telephone to the Excise staff at Rohtak to seal the business premises of Cdr. Dutta, as his licence had been cancelled.

17.40 Cdr. Dutta has brought to the notice of the Commission that his business premises had been earlier inspected on more than eighty occasions by the Excise staff, but no irregularities had been detected during those inspections. But this time when the raid was conducted on the instructions of the Chief Minister, some irregularities and discrepancies were detected leading to the cancellation of the licence of Cdr. Dutta. Shri Taneja, it seems, acted with alarming expedition in initiating action against Cdr. Dutta and in cancelling his licence, and inclosing his L-I godown. He organised a raid, detected irregularities and himself carried the seized liquor to the Chemical Examiner's office. He was the sample-taker, sealing agent as well as the carrier of the seized liquor to the Chemical Examiner's office and also an arbiter. Shri Taneja rejected Cdr. Dutta's plea for a second examination by an independent Examiner on the ground that no useful purpose would be served by re-testing of the sample. No proper search warrant was made out and no order in that behalf was recorded.

17.41 Cdr. Dutta's appeal against the order of cancellation of his licence was heard on June 2, 1977, i.e., 18 months after it was submitted. Shri J. K. Duggal, Excise and Taxation Commissioner, was not able to offer any satisfactory explanation as to why Cdr. Dutta's appeal had been kept unattended for such an inordinately long period. In the appeal, the order of cancellation of licence was set aside by the appellate authority as it was considered 'harsh'.

17.42 On November 19, 1975, Cdr. Dutta was detained under Section 3(1)(a)(ii) read with Section 3 of the MISA. He had to remain in detention till December 19, 1975. In the grounds of detention, it was mentioned that he had been inciting people to indulge in subversive activities with a view to overthrowing the Government through violent means, and he had also been holding meetings in different areas of Rohtak from November 16 to 18, 1975, urging the people to collect arms and ammunition and create chaotic conditions in the country. Shri S. P. Mittal, who was the Deputy Commissioner, Rohtak, from August 31, 1975 to April 20, 1977, has stated that Shri Mehtani had informed him on a number of occasions that the Chief Minister, Shri Bansi Lal was annoyed with Cdr. Dutta and wanted the detention of the latter under MISA. Shri Mittal has further stated that on November 16, 1975, during his visit to Chandigarh he was taken by Shri Mehtani to the Chief Minister's office where the Chief Minister had in no uncertain terms expressed his displeasure at the fact that Cdr. Dutta had not yet been detained under MISA by the District authorities. Shri Mittal has further stated that the following day, i.e., November 18, 1975, when the Chief Minister visited Rohtak, he got the earlier instruction regarding the detention of Cdr. Dutta again confirmed by the Chief Minister. He took this extra precaution as he felt that this was necessary in view of the unusual and extraordinary interest that Shri Mehtani was taking in the matter. Shri Mittal then discussed the matter with the Senior Superintendent of Police, Shri Mohan and both of them decided that though there were no adverse reports against Cdr. Dutta, they would have to now initiate steps for his detention because of the emphatic verbal orders of the Chief Minister. Shri Mittal has admitted that he was aware of the fact that Shri Bansi Lal's annoyance against Cdr. Dutta stemmed from the latter's refusal to give dealership to Shri Ram Chander of Bhiwani, a person close to Shri Bansi Lal.

17.43 Shri S. H. Mohan, ex-SSP, Rohtak, has corroborated the version of the Deputy Commissioner concerning the events and circumstances under which the detention order against Cdr. Dutta had to be issued. Shri Mohan has stated that though there were no adverse materials whatsoever to justify Cdr. Dutta's detention under the MISA, he had to personally prepare a report containing fabricated grounds of detention. Shri Mohan has further mentioned that on earlier occasions he had raised objections whenever the question of Cdr. Dutta's detention was raised by the successive Deputy Commissioners. But this time, in view of the Chief Minister's explicit order, he had to toe the line of the Deputy Commissioner and concoct a report. Shri Mohan admitted that it was wrong on his part to have associated himself with the preparation of the report which had landed an innocent man in the jail; considering the nature of the times, he felt that he had to agree with the Deputy Commissioner's instruction, as non-compliance on his part would have upset the Chief Minister. The police as well as the CID records bear out the fact, that there were no adverse reports against Cdr. Dutta.

17.44 The order of detention of Cdr. Dutta was confirmed by the State Government on December 2, 1975. Shri A. N. Mathur, the then Deputy Secretary, Home Department, has stated that when the detention order of Cdr. Dutta under the MISA came up for confirmation, he felt disturbed because as the ex-District Magistrate, Rohtak, he knew Cdr. Dutta well and he expressed his unhappiness about the detention of Cdr. Dutta to the Home Secretary, Shri M. C. Gupta. He, however, advised him to be prudent and not to raise questions over this issue, as it had been decided at the highest level. Shri Mathur has stated that the highest level meant to him the Chief Minister; and, as such, without any further inquiry he unwillingly, and in a mechanical manner, moved the proposal for the confirmation of the order of Cdr. Dutta's detention.

17.45 Shri M. C. Gupta, the then Home Secretary, has not, however, accepted Shri Mathur's version and stated that he had advised Shri Mathur to deal with the case on its merits and on the basis of the records available. Shri Gupta has further admitted before the Commission that confirmation of the order at the Government level was not preceded by any inquiry and the confirmation was done, more or less, in a mechanical manner.

17.46 Shri R. C. Mehtani has categorically denied that he had communicated over the telephone any message to Shri A. N. Mathur that Cdr. Dutta was an undesirable person. Similarly, he also denied that he had asked Shri Garg to remove Cdr. Dutta from the membership of DSS&A Board or conveyed to Shri Mittal the Chief Minister's instruction—that Cdr. Dutta should be detained under the MISA. Shri Mehtani could not offer any plausible explanation as to why the three successive District Magistrates of Rohtak, namely, Shri Mathur, Shri Garg and Shri Mittal, who had no animus against him, were stating before the Commission that it was he, who was conveying to them the various orders reportedly of the Chief Minister regarding action to be initiated against Cdr. Dutta. Shri Mehtani stated that these officers were deliberately trying to make a scapegoat of him.

17.47 Evidence has been led before the Commission that in the firm M/s. Ram Chander & Sons, Smt. Savitri Devi, Shri Mehtani's brother-in-law's wife, was a partner holding 15 per cent shares. Shri Ram Chander was trying to corner the lucrative liquor business of Cdr. Dutta, and particularly Khoday's prized dealership, which accounted for approximately 75 per cent of Cdr. Dutta's business. Cdr. Dutta has stated that after his release from detention, he was pressurised by the Excise Department to sell on two occasions Khoday's products from his Bonded Warehouse to M/s. Ram Chander & Sons and to nobody else. After the cancellation of Cdr. Dutta's licence, M/s. Ram Chander & Sons and M/s. M. M. & Co., Faridabad, started receiving supplies from Khoday's. The proprietor of M/s. M. M. & Co., Faridabad was Shri Mahinder Kumar, the son of Smt. Savitri Devi.

17.48 Counsel for Shri Mehtani strenuously contended that Shri Mehtani had only communicated the Chief Minister Shri Bansi Lal's various orders to the District Magistrates; and he could not be held guilty of abetment simply because he was close to the Chief Minister. In respect of Cdr. Dutta's detention, he stated that the District Magistrate took action only when the Chief Minister explicitly told him to detain Cdr. Dutta and even then he had got confirmed his earlier instruction. The counsel also stressed the point that the excise raid was conducted at the instance of the then Minister of Excise, and Shri Mehtani was in no way responsible for it.

17.49 On a review of the available evidence, the Commission feels that Shri Mehtani, who had commenced his career as a Lower Division Clerk in the Haryana Government, and had a meteoric rise when he became the OSD to the Chief Minister drawing a salary of nearly Rs. 2,300, wielded extraordinary influence and authority in the State of Haryana. Shri Garg has clearly stated that the orders conveyed by Shri Mehtani were considered by him as orders emanating from the Chief Minister. The evidence of Shri Garg, Shri Mittal and Shri Mathur clearly establishes that Shri Mehtani was frequently pressing them for action against Cdr. Dutta; and there is no reason to believe that all these responsible officers who have had no grudge against Shri Mehtani so that they could have conspired to speak against him. The facts on record reveal that Shri Mehtani had an interest in the business of the firm, M/s. Ram Chander & Sons, with which his brother-in-law's wife, Smt. Savitri Devi, was closely connected. He would have liked to see that this firm got a chunk of Cdr. Dutta's lucrative liquor business in Haryana. When Cdr. Dutta's licence was cancelled, the immediate beneficiaries were M/s. Ram Chander & Sons and M/s. M. M. & Co., in which the relatives of Shri Mehtani were proprietor and shareholder. In spite of Shri Mehtani's denial of any interest in the business of Cdr. Dutta, it is clear on the evidence on record that his relations stood to gain by getting Cdr. Dutta into trouble. Towards this end, he appears to have grossly misused his official position.

17.50 Shri Mehtani and Shri Bansi Lal were served with notices under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules and summons under Section 8B of the Commissions of Inquiry Act.

17.51 Shri Bansi Lal appeared on July 3, 1978, before the Commission and raised certain objections regarding the procedure adopted by the Commission and also took the plea that he was not bound legally and constitutionally to make any statement before the Commission. The Commission rejected his contention and directed him to take oath and give his version of the case, but he declined to do so. A complaint under Sections 178 and 179 IPC has, therefore, been forwarded to the Chief Metropolitan Magistrate, Delhi, against him by the Commission for refusing to take oath

and for refusing to testify on oath before the Commission.

17.52 Shri Mehtani did not submit any detailed statement in response to the notice served on him under Rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972. In his reply he, however, stated that his statement before the Commission recorded at the first stage of the Commission's hearing should be taken as his statement, and had added that he would submit a fresh statement if he felt the necessity for doing so after taking into account the evidence that would be brought on record as a result of the cross-examination.

17.53 The Commission has taken into account the submissions made by Shri Mehtani's counsel before the Commission, including the written representation submitted to the Commission on the subject of the business interest of Smt. Savitri Devi, wife of the brother-in-law of Shri Mehtani, in the firm of M/s. Ram Chander and Sons. The Commission is satisfied that Shri Bansi Lal had issued verbal instructions to the District Magistrate, Shri Mittal, to detain Cdr. Dutta. Shri Bansi Lal appears to have acted in a move to help one Ram Chander, a milk vendor, who happened to be very close to him. In addition, he also acted under the influence of his official assistant, Shri Mehtani, who had a direct personal interest in promoting the business interests of M/s. Ram Chander & Sons. This firm was associated with the wife of his brother-in-law, who had 15 per cent share in the business concern of M/s. Ram Chander & Sons. Both Shri Mehtani and Shri Bansi Lal appear to have come to the conclusion that Cdr. Dutta would not agree to give to Shri Ram Chander the sub-dealership of Khoday's products without being coerced to do so. In the process, they stopped short of nothing including the detention of Cdr. Dutta on entirely concocted grounds. The District authorities, DM and SSP, were the creatures of the circumstances, who were instrumental in carrying out the wishes of Shri Bansi Lal apprehending the consequences that would inevitably have followed, if they showed any reluctance to comply with the wishes of Shri Bansi Lal. Cdr. Dutta understandably lamented before the Commission about the "gutless administration" that prevailed in the country those days when nobody had the courage to protest against the arbitrary decision of a "despotic Chief Minister".

17.54 An innocent citizen, who had given the best part of life to the service of the Nation, was got imprisoned and he remained in jail for a month. The irreparable damage to the reputation and social standing that Cdr. Dutta has suffered by the vindictive operations of Shri Bansi Lal and Shri Mehtani cannot be adequately compensated or even atoned for. The Commission is of the view that Shri Bansi Lal and Shri Mehtani have grossly misused their position and authority, and were responsible for the illegal detention under MISA of an innocent individual for purely personal reasons, which nothing to do with the maintenance of public order or even the furtherance of the emergency.

IV. Detention Under MISA of Shri Ishwar Lal Choudhary, District Employment Officer, Bhiwani (Haryana)

17.55 Shri Ishwar Lal Choudhary, son of Shri Matu Ram, while serving as the District Employment Officer, Bhiwani, was detained on November 5, 1975 under clause (a)(ii) of sub-section (1) of Section 3 of the Maintenance of Internal Security Act, 1971, read with Section 3(2) of the said Act on the orders of the District Magistrate, Bhiwani. He was lodged in Hissar Jail till his release on April 7, 1976.

17.56 In the grounds of detention, it was mentioned that Shri Ishwar Lal Choudhary was trying to create "disaffection towards the lawful authority of the Government by utterances that the present regime was indulging in favouritism, nepotism and corruption" and urging people to unite to overthrow such a Government. He was also accused of inciting the people to burn Government buildings, stone buses and stop the movement of trains, so that anarchic conditions are created and administration in the country is paralysed.

17.57 Shri Ishwar Lal Choudhary has stated that as the District Employment Officer, Bhiwani, he incurred the displeasure of Shri Surinder Singh, son of Shri Bansilal, the then Chief Minister, and Shri Mahabir Parshad, Political Secretary of the Chief Minister, for his refusal to comply with their irregular requests. Shri Surinder Singh tried to pressurise him to include the names of his nominees in the lists of candidates forwarded from the Employment Exchange to the employers. Shri Choudhary stated that whenever possible, he tried to accommodate the nominees of Shri Surinder Singh within the framework of the rules. But on certain occasions, when the nominees did not possess the requisite qualifications, he had to reluctantly express his inability to help them. This correct attitude on his part, according to him, had antagonised Shri Surinder Singh, who, on a number of occasions, had threatened Shri Choudhary with dire consequences.

17.58 Shri Choudhary has further stated that on November 5, 1975, he received a message through Shri Manohar Lal, Deputy Superintendent of Police, asking him to meet the Chief Minister, Shri Bansilal, who had come to Bhiwani on tour, at the latter's Bhiwani residence. Shri Choudhary went to the Chief Minister's residence, where a number of other District functionaries as well as members of the public were present. There, the Chief Minister, in the presence of others, accused Shri Choudhary of registering names of the people of Rohtak District in the Bhiwani Employment Exchange, and without giving Shri Choudhary any opportunity to explain his conduct, ordered his detention under MISA. In accordance with the Chief Minister's directive, Shri Choudhary was arrested by the police and taken to the City Police Station, where he was served with the detention

order issued by the District Magistrate. He was subsequently taken to the District Jail, Hissar.

17.59 Shri R. S. Verma, District Magistrate, Bhiwani, has corroborated the version of Shri Choudhary regarding the unusual circumstances and manner of his arrest. Shri Verma has stated that on November 5, 1975, he was present at the Chief Minister's residence when Shri Bansilal in a huff ordered, in the presence of all, the detention of Shri Choudhary under MISA on the charge that the latter was recruiting in Bhiwani only men from Rohtak District. He was also directed by the Chief Minister to enquire into and find out the number of people who had been registered in Bhiwani Employment Exchange with C/o addresses in violation of the Government policy on the matter. Shri Verma has stated that as the order of detention of Shri Choudhary under MISA had originated directly from the Chief Minister, he had no other option but to communicate the order of the Chief Minister to the Superintendent of Police for necessary action. The question of satisfaction before issuance of the detention order, therefore, did not arise. Shri Verma has frankly admitted that he lacked courage to resist the Chief Minister, Shri Bansilal, who had ordered the detention of Shri Choudhary. Shri Choudhary, according to Shri R. S. Verma, was an honest and straightforward officer, against whom he had received no complaints of commission of irregularities prior to this incident. In the monthly meetings of the District Public Relations and Grievances Committee, nobody had levelled any allegation against the District Employment Officer. Shri Verma has stated that he learnt later on that Shri Surinder Singh, who harboured a grudge against Shri Choudhary, was instrumental in influencing Shri Bansilal to issue this arbitrary and unjust order. When Shri Banarsi Dass Gupta assumed the office of Chief Minister of Haryana, Shri Verma interceded with Shri Banarsi Dass Gupta for the release of Shri Ishwar Lal Choudhary, as he felt that grave injustice had been done to an upright officer.

17.60 Shri Y. S. Nakai, former SSP Bhiwani, has narrated the circumstances under which he had to initiate steps for preparing a report to justify the detention of Shri Choudhary under the MISA. He has stated that on November 5, 1975, he was present at Charkhi Dadri to supervise the arrangements for a public meeting to be addressed by the Chief Minister. There at Charkhi Dadri, the District Magistrate had communicated to him the order of Shri Bansilal for the detention of Shri Ishwar Lal Choudhary. This clinched the issue. Though there was nothing on record against Shri Choudhary, he had, in view of the Chief Minister's clear directive, to ask the District CID Inspector, Shri Parmanand, to prepare a report to make possible Shri Choudhary's detention under MISA. He knew that the report submitted by the Inspector was a fabricated one, but because of the compelling circumstances he had to forward it to the District Magistrate.

17.61. The CID Inspector, Shri Parma Nand has admitted that the note prepared by him on the explicit instruction of the Superintendent of Police was totally concocted, containing "trumped-up charges" against an officer enjoying a very good reputation. According to Shri Parma Nand, the real reason behind Shri Choudhary's detention was Shri Surinder Singh's hostility towards Shri Choudhary because of the latter's refusal to comply with the irregular requests of Shri Surinder Singh in the matter of forwarding the names of his candidates. When specifically asked by the Commission as to what would have happened if he declined to be a party to this frame-up, Shri Parma Nand stated that in that even his fate would have been similar to that of Shri Choudhary.

17.62 Shri Choudhary was reputed to be a fair and straightforward officer and no complaint of commission of irregularities against him had come to the notice of his departmental superiors. Shri P. N. Bhandari, Joint Director of Employment, Government of Haryana, has stated that Shri Choudhary had not contravened any departmental rules and instructions, and his detention for alleged nepotism and irregularities was improper and entirely undeserved. Shri Bhandari has explained that the instruction issued by the Haryana Government against registering in employment exchange, people with C/o addresses, was to prevent people hailing from places outside Haryana from registering themselves at Employment Exchanges in Haryana State, and there was no ban on unemployed persons of Haryana State from registering their names in the Employment Exchanges within the State. Shri Bhandari felt that if Shri Choudhary was indulging in acts of nepotism and favouritism, he could have been properly dealt with under the Civil Service Rules without invoking the provisions of the MISA.

17.63 Shri B. D. Gupta, former Chief Minister, Haryana has deposed that sometime in November, 1975 he was present at Bhiwani (he was then Irrigation and Power Minister) with Shri Bansilal, when the latter in great exasperation ordered in the presence of others, the detention of Shri Ishwar Lal Choudhary under MISA. He came to know from Shri Bansilal that Shri Surinder Singh had complained against this District Employment Officer for registering the names of people from outside the district in the District Employment Exchange. Shri Gupta has mentioned that he had tried to intervene in favour of the officer, as he felt that the proposed punishment was unjust and exceptionally harsh. But Shri Bansilal remained adamant and refused to heed to any suggestion. He further stated that later on when he became Chief Minister, he received representations from the relatives of Shri Choudhary praying for his release, and taking into consideration the fact that grave injustice has been done to this officer, he ordered his release. He was also told by the District Magistrate that Shri Choudhary was the victim of flagrant injustice.

17.64 Shri Bansilal was served with a notice under Rule 5(2) (a) of the Commissions of Inquiry

(Central) Rules, 1972, and was summoned under Section 8B of the Commissions of Inquiry Act. He appeared before the Commission and made a long statement questioning the procedure adopted by the Commission for conducting the inquiry and expressed his inability to state anything on oath as he was not legally and constitutionally bound to do so. On the subject-matter of the cases related to him, he did not furnish any information to the Commission. The Commission has preferred a complaint under Sections 178/179 of the Indian Penal Code against Shri Bansilal in the court of the Chief Metropolitan Magistrate, Delhi, for refusing to take oath and give evidence on oath.

17.65 This case unfolds a sordid tale of gross abuse of power and misuse of authority. The manifestly wrong and illegal detention of Shri Ishwar Lal Choudhary illustrates Shri Bansilal's capricious and highly arbitrary style of administration. A straightforward and honest officer performing his duties according to rules was detained, because he failed to comply with the irregular requests of Shri Surinder Singh, son of Shri Bansilal. The district authorities in their turn meekly and unquestioningly carried out the order of detention of an officer against whom there was nothing on record. The provisions of MISA were misused in a blatant manner because Shri Bansilal wanted it.

V. Harassment and Detention under MISA of Shri Pitambar Lal Goyal

17.66 Shri Pitambar Lal Goyal, son of Shri Ram Partap of village Bapora, District Bhiwani, Haryana, after a brilliant academic career, started practising as an Advocate in the courts of Bhiwani District. It has been complained before the Commission that Shri Pitambar Goyal, his father, grandfather and uncle were the victims during the emergency of relentless vendetta of Shri Bansilal, the Chief Minister of Haryana. The entire family was subjected to a sustained campaign of victimisation. Shri Goyal has given the background of the rivalry between his family and that of Shri Bansilal and has stated that the members of his family had supported in the Vidhan Sabha Elections in 1962, Shri Devi Lal who as an independent candidate had contested against Shri Bansilal from the Tosham constituency, and that in the local Bar Council elections at Bhiwani he along with some other lawyers had opposed the candidature of Shri Surinder Singh, son of Shri Bansilal for the post of the President of the District Bar. This turned Shri Surinder Singh into a bitter enemy of Shri Pitambar Lal Goyal.

17.67 Shri Banarsi Dass Gupta, former Chief Minister of Haryana, who also hails from Bhiwani, has corroborated the version of Shri Goyal regarding the strained relations between the families of Shri Goyal and Shri Bansilal for a variety of reasons like the support rendered by Shri Mangat Ram, grandfather of Shri Goyal, to Shri Devi Lal against Shri Bansilal in Assembly Elections, the personal hostility of Shri Surinder Singh towards Shri Goyal and the smear campaign of Shri Devi Parsanna, a confidant of Shri Bansilal, against the Goyal family.

17.68 In 1973, Shri Pitambar Goyal appeared in the Haryana Civil Service (Judicial) Examination and stood sixth in the order of merit. A Medical Board consisting of Chief Medical Officer, Rohtak, as President, and two other doctors, Dr. S. K. Mahajan, Assistant Professor, Medicines, and Dr. B. S. Chauhan, Assistant Professor of Ophthalmology of Medical College, Rohtak, was constituted by the State Government for the medical examination of the selected candidates on June 6, 1975 at Rohtak. Shri Bansi Lal wanted to prevent Shri Goyal from entering the service and so covert efforts were made at his instance to declare Shri Goyal unfit for selection. Dr. P. R. Sondhi, Director, Health Services, Haryana has stated that sometime in May/June, 1975, he was summoned by the Chief Minister, Shri Bansi Lal, and was told that Shri Goyal, who was to appear before the Medical Board, should be declared unfit. Dr. Sondhi has said that he was hesitant to comply with this direction of the Chief Minister, but he was told in no uncertain terms that steps should be taken to get Shri Goyal medically disqualified. According to Dr. Sondhi, he visited Rohtak around June 10, 1975, after the Medical Board had already examined Shri Goyal and declared him fit. He, thereupon, enquired from Dr. A. C. Jain, Chief Medical Officer, if the two other specialists were willing to carry out the desire of the Chief Minister and he was told that they would not agree to that suggestion. Dr. Sondhi has further stated that on his return to Chandigarh, he informed the Chief Minister that the Medical Board had already declared Shri Goyal fit and that nothing further could be done. The Chief Minister appeared unconcerned. Dr. Sondhi has further disclosed that in November, 1975, during the CMOs' Conference at Chandigarh, Dr. Jain showed him the Medical Form of Shri Goyal containing some alterations and mentioned that the candidate had been referred to a second Medical Board for final opinion, because he was suffering from chronic epididymitis. Dr. Sondhi has said that he expressed his unhappiness at these alterations of the medical report and advised Dr. Jain to get the "cuttings" (alterations) initialled by the two other specialists. He was told by Dr. Jain that they were not willing to do so. Dr. Sondhi admitted before the Commission that what Dr. Jain

did, was against medical ethics and amounted to falsification of official records.

17.69 Dr. Mahajan and Dr. Chauhan have both deposed that there were no "cuttings" etc. in the Medical Report Form of Shri Goyal when they had signed it. According to Dr. Chauhan, the members of the Board are specialists, who examine the candidates in respect of their own specialities and record their findings in the appropriate columns meant for them.

17.70 Dr. A. C. Jain, CMO, Rohtak, disowned some portions of the earlier statement given by him before the Investigating Officer of the Commission, and said that he could not muster courage earlier and give a true statement because of the fear of the head of the department, Dr. Sondhi. According to Dr. Jain, Dr. Sondhi had earlier apprised him of the desire of the Chief Minister that Shri Goyal should be declared medically unfit, but notwithstanding this direction, he acted according to his conscience and the Board declared Shri Goyal fit. Dr. Jain has mentioned that on two occasions during the month of June, 1975, he was called to Chandigarh from Ambala, where he was availing of his leave and was "pressurised" by Dr. Sondhi, who was close to Shri Bansi Lal, to make some alterations in the report.

17.71 Dr. Jain has further said that he argued with Dr. Sondhi and pointed out that it would not be correct, as well as risky, on his part to write adverse remarks in the report regarding subjects pertaining to the other Specialists of the Board. Thereafter, according to Dr. Jain, the remarks pertaining to the other specialists were struck off, and it was pointed out in the report that the candidate was suffering from chronic epididymitis and should be referred to a second Medical Board.

17.72 The medical report on Shri Goyal containing adverse remarks was sent to the Central Forensic Science Laboratory (CFSL) for examination and opinion by the investigating staff of the Commission. According to the expert's opinion, "the original writings in obliterated entries, when deciphered, read as follows :—

"RESULT OF EXAMINATION"

Sr. No.	Obliterated entry marked (a)	Against Column	Deciphered original writing	Subsequent writing
1. Q1	Col. 15 of Medical Report	"Is there any evidence of a severe degree of hydrocele, varicocele, varicose veins, Haemorrhoids?"	"Internal Piles p"	Nil : Original writings scored out.
2. Q2	Col. 17	"Is there any evidence of disease of the digestive organs?"	"Liver just palpable"	Nil : Original writings scored out.
3. Q3	Col. 20(b)	"Is there any evidence of disease of the genital organs?"	"No"	"Chronic Epididymitis Right side"
4. Q4	Col. 3 in certificate of fitness.	"or has already been small pox and shows various scars."	"Chairman's abnormal findings :— 1. Liver just palpable 2. Internal Haemorrhoids p 3. Chronic Epididymitis Right Side."	

In Q4 the entry No. 1 and 2 were subsequently scored out and the entry No. 3 was altered into entry No. 1."

(Entries 1 and 2 having been scored out, the numerical 3 was converted into 1).

17.73 It is evident that Dr. Jain initially had made an entry in Column 17 in respect of matters not within his speciality and later on scored it out; but in column 20, he subsequently made an entry regarding 'chronic epididymitis', whereas earlier he had written 'No' against this column.

17.74 Efforts were also afoot to prevent by other means Shri Goyal from joining the service. Shri Harnam Singh, Station House Officer, Police Station, Sadar, Bhiwani, stated before the Commission that he was categorically directed by Shri R. S. Verma, District Magistrate, Bhiwani, to give an adverse verification report to prevent Shri Goyal from joining the service. Shri Harnam Singh has said that he prepared his verification report on the basis of the statements received by him from three respectable villagers in which they had mentioned that Shri Goyal was indulging in anti-Government activities and had a naxalite bent of mind. Accordingly, he noted in his verification report that Shri Goyal was not fit for Government service.

17.75 The District Magistrate, Shri R. S. Verma, has denied that he had asked Shri Harnam Singh to give an adverse verification report against Shri Goyal, and added that Shri Harnam Singh was making this kind of statement before the Commission for "covering his own misdeeds". Shri Verma produced before the Commission the note recorded by Shri Harnam Singh as early as in 1974 in the Confidential Register maintained in the Police Station to the effect that Shri Goyal was a constant critic of the Government and had a naxalite bent of mind. In this connection, Shri Y. S. Nakai, Sr. Superintendent of Police, has stated that Shri Harnam Singh never told him about the District Magistrate's special instruction to him regarding the preparation of an adverse verification report against Shri Pitambar Goyal. Shri Harnam Singh, SHO, however, maintained that the District Magistrate had summoned him directly and asked him to send the adverse verification report against Shri Pitambar Goyal.

17.76 Immediately after the proclamation of the emergency, order for detention of Shri Goyal under the MISA was issued by the District Magistrate, Bhiwani. Both Shri R. S. Verma, the District Magistrate, and Shri Y. S. Nakai, the SSP, have stated that on the night of June 25/26, 1975, Shri Bajwa, IGP contacted them on radio wireless and communicated to them the names of a number of persons of Bhiwani, including Shri Pitambar Lal Goyal, who were to be detained under MISA. In pursuance of the instruction of the IGP, Shri Nakai sent a report to the District Magistrate in which it was stated that on June 24, 1975, Shri Goyal was seen indulging in anti-Government activities and inciting the people of village Bapora to participate in acts of subversion and sabotage. Shri Nakai has admitted that there were no materials available against Shri Goyal, but he had fabricated the report

against Shri Goyal in view of the clear instruction of the State Government.

17.77 Shri R. S. Verma, the District Magistrate, has admitted that he signed the detention order on the morning of June 26, when there was before him no material whatsoever against Shri Goyal, and he had no option but to issue the order without satisfying himself regarding the adequacy and veracity of the grounds of detention.

17.78 The order of detention against Shri Goyal was not served as he could not be immediately traced out by the police. On July 13, 1975, Shri Pitambar Lal Goyal surrendered himself before the SSP, Bhiwani, when he came to know that his grandfather, father and uncle had been kept confined at the Police Station Sadar. Shri Mangat Ram, Shri Ram Partap and Shri Ram Niwas, grandfather, father and uncle of Shri Goyal have stated that they were kept detained at the Police Station Sadar, Bhiwani, from July 1, 1975 to July 14, 1975 and then shown as arrested on July 14, 1975, under Sections 107/151 Cr. P. C. Shri Nakai has denied before the Commission any personal knowledge about the detention of Shri Mangat Ram and his Sons at the Police Station. Shri Mangat Ram, a village Ayurvedic physician, has stated that he and his sons were illegally detained in the Police Station by Shri Harnam Singh, SHO, and had to suffer various sorts of inconvenience and indignity. They were pressurised and coerced by the police to disclose the whereabouts of Shri P. L. Goyal. Shri Mangat Ram has stated that Shri Bansi Lal and Shri Bansi Lal's son, Shri Surinder Singh, and their associate Shri Devi Parsanna, were responsible for harassment caused to him and the members of his family.

17.79 Shri Harnam Singh has, however, denied that he detained the family members of Shri Goyal illegally for about a fortnight at the Police Station; he has admitted the fact that he had summoned them at the Police Station every day to find out the movements of Shri Pitambar Lal Goyal, and that he was doing this at the instance of the District Magistrate. The unlawful detention of Shri Mangat Ram, Shri Ram Partap and Shri Ram Niwas at the Police Station has been confirmed by the evidence of Shri Maman Ram, a jeep driver of the Office of the Executive Engineer, PWD, Bhiwani, and Thakur Narender Singh, an Advocate of Bhiwani. Shri Maman Ram has stated that he was attached to the Police Station from June 27, 1975 till July 17, 1975, and had witnessed the detention of Shri Mangat Ram and his two sons at the Police Station. Shri Narender Singh, who was arrested under MISA on July 5, 1975, and taken to the Police Station, has stated that he had seen Shri Mangat Ram and his two sons at the Police Station and had been told by them that they had been detained there by SHO, Shri Harnam Singh.

17.80 Shri R. S. Verma has contradicted the version of Shri Harnam Singh and emphatically

denied that at any time he had asked Shri Harnam Singh to pressurise the family members of Shri Goyal in order to ascertain the latter's whereabouts.

17.81 Shri Mangat Ram and his two sons were shown as arrested on July 14, 1975 under sections 107/151 Cr.P.C. They were produced before the SDM, Bhiwani, who refused to release them on bail. They were ultimately released on bail by the order of the High Court on September 23, 1975.

17.82 After his release from Jail custody, Shri Ram Partap, father of Shri Pitambar Lal Goyal, made efforts at various levels for the release of his son and submitted petitions against Shri Bansilal to the President of India, the Home Minister, the Governor of Haryana, etc. Apparently, the efforts of Shri Ram Partap to secure the release of his son Shri Pitambar Goyal, seem to have irked the authorities. The result was that Shri Ram Partap was detained under MISA. According to Shri Nakai, the decision to detain Shri Ram Partap emanated from "higher quarters". Shri Verma has admitted that in the case of Shri Ram Partap's detention also, he passed orders without applying his mind.

17.83 Shri Goyal who, after his detention, had been lodged in Hissar Jail, submitted an application on January 23, 1976, for appearing in Haryana Civil Service (Judicial) Examination to the Jail authorities. This application was duly forwarded to the Secretary, Jail Department. It is seen from the relevant file that the Chief Secretary, Shri S. D. Bhambri, who was concurrently holding the charge of the Jail Department, recorded a note suggesting that clause 17 of the Haryana Detenus (Conditions of Detention) Order, 1971, should be amended, so that no detenu can apply for or take to any academic or competitive examination during the period of detention. In the note, it was also mentioned that as a result of this amendment, it would be possible to withhold the application of Shri Goyal.

The exact noting in the file is reproduced below:

क्लाज 17 को संशोधित कर दिया जाय ताकि कोई detenu किसी प्रकार की परीक्षा—academic या Competitive—न दे सके। ऐसी amendment करने के फलस्वरूप आवेदक detenu (श्री पीताम्बर लाल गोयल) का application form रोक दिया जाएगा। आदेशार्थ।

ह०/-

स० दास भाम्बरी

3-2-76

MET (away)

TM

ह०/-

कन्हैया लाल

3-2-76

CM

मुख्य मंत्री ने देख लिया है।

ह०/-

जे० डी० गुप्ता

PS(CM)

3-2-76

Further कार्यवाही के लिए।

Sd/-

(S. D. Bhambri)

3-2-76

On February 4, 1976, the Government Notification incorporating the necessary amendment, i.e. Haryana Detenus (Conditions of Detention) Second Amendment Order, 1976, was passed.

17.84 Shri S. D. Bhambri has stated that he recorded this note at the express direction of the Chief Minister, Shri B. D. Gupta. He said that he had pointed out to Shri B. D. Gupta that such an embargo was unjustified; but he failed to dissuade the Chief Minister from the course of action directed by him. The Chief Minister told him that this was to be done in accordance with orders from "higher quarters", i.e. the Union Defence Minister. Shri Bhambri has admitted that he recorded this note under the special circumstances stated by him against his good sense and judgment and he did not put forth his own point of view in the file, as he felt that in the circumstances prevailing at that time this course would have been counter-productive, and further diluted his effectiveness as a counsellor for the future, without changing in any way the decision in the instant case. Shri Bhambri has also mentioned that he had no axe to grind against Shri Pitambar Lal Goyal, and later on tried to redress the wrong which had been done to him by appointing him to the Haryana Civil Service (Judicial) on the basis of his earlier selection.

17.85 Shri B. D. Gupta stated that he had never issued any instruction to Shri Bhambri to record a note suggesting the proposed amendment. As a matter of fact, this subject had never been personally discussed by Shri Bhambri with him. He also hinted that Shri Bansilal was personally interested in this particular case and the Chief Secretary may have put up the note on the instruction of Shri Bansilal. According to him, senior officers of the Haryana Government maintained liaison with Shri Bansilal even when the latter had become the Union Defence Minister. Shri Gupta also admitted that during his Chief Ministership, in respect of matters in which Shri Bansilal was personally interested, he did not interfere. He also added that having known the grave injustice done to Shri Goyal, he tried to undo the wrong by helping Shri Goyal to join the Haryana Civil Service (Judicial).

17.86 Notices under Rule 5(2)(a) of the Commissions of Inquiry Rules and summons under Section 8B of the Commissions of Inquiry Act were

issued to Dr. A. C. Jain, Shri R. S. Verma, Shri S. D. Bhambri and Shri Bansi Lal.

17.87 Dr. A. C. Jain submitted his written representation. He cross-examined Dr. Sondhi but did not elicit anything which may support his version. Dr. Sondhi admitted that he had sent for Dr. Jain in the month of June, 1975, to Chandigarh, but that was in connection with the transfer orders of Dr. Jain. Dr. Jain was not able to explain to the Commission what were the actual threats or pressures on him which compelled him to do what he had done for manipulating the records of the Medical Board. Dr. Jain did not have any satisfactory explanation as to why he failed to get the concurrence of the other two Members of the Board, before revising the opinion of the Board on the medical report of Shri Pitambar Lal Goyal. Dr. Jain pleaded that he had no personal interest in the case and that he had only recommended a second medical opinion without categorically rendering Shri Goyal medically unfit. The fault of Dr. A. C. Jain was to charge the report of the Medical Board in the manner in which it was done and as pointed out by the Forensic Expert which has been quoted in the body of this Report. What Dr. Jain had done, whatever may have been the compulsions under which he may have worked, was completely contrary to the conduct expected of a senior and responsible doctor and contrary to medical ethics.

17.88 It does appear, on the admission of Dr. Sondhi himself, that he had met Dr. Jain and explored the possibility of altering the records. He had also seen the form as eventually altered by Dr. Jain, but he did not take any steps in this regard.

17.89 The Commission is of the opinion that Dr. A. C. Jain as the Chairman of the Medical Board, has misused his position and abused his authority in manipulating the medical report on Shri Pitambar Lal Goyal.

17.90 Shri R. S. Verma, District Magistrate, was served with a notice under Rule 5(2)(a) of the Commissions of Inquiry Rules and summons under Section 8B of the Commissions of Inquiry Act. He had given a written representation and had also examined witnesses. The version of Shri Harnam Singh, SHO, that the adverse police report on Shri Goyal was got prepared at the instance of Shri R. S. Verma, is not acceptable. An adverse report as prepared by SHO, Shri Harnam Singh himself against Shri Goyal finds mention in para 4 of the Confidential Register of the concerned Police Station for the year 1974. There is another report prepared prior to this by another SHO on Shri Goyal which also is of an adverse nature. The Commission did not pursue the circumstances under which these two adverse notes came to be written in the year 1974 by two different SHOs as it was outside the scope of the inquiry. It is sufficient to mention here that the evidence of Shri Harnam Singh, SHO, has not been found by the Commission to be reliable. Under the circumstances, the

Commission does not find Shri R. S. Verma responsible for any improper conduct with regard to the verification of the character and antecedents of Shri Pitambar Lal Goyal.

17.91 Shri Bhambri was served with a notice under Rule 5(2)(a) of the Rules and summons under Section 8B of the Commissions of Inquiry Act. He submitted a written statement and also cited two witnesses for being examined in his defence, and also Shri B. D. Gupta for cross-examination. Shri B. D. Gupta could not be present because of the illness of his son and hence Shri Bhambri agreed to give him up. It may be relevant to point out at this place that when Shri Bhambri asserted at the first stage of the hearing that the noting that he had made in the file was in pursuance of the instruction given to him by the Chief Minister, Shri B. D. Gupta, this was denied by Shri B. D. Gupta in the presence of Shri Bhambri. Actually both Shri B. D. Gupta and Shri Bhambri took the witness box twice on this occasion to deny each other's version of the case. Shri M. L. Sharma, Office Superintendent in Shri Bhambri's office, has stated that :—

"I distinctly remember that the Chief Secretary, who was holding the Home Department as well, sent for me and there I was enquired whether any representation or a letter or a reference from Mr. Pitamber Lal Goyal has been received. Then I replied in the affirmative. Thereafter, my worthy Chief Secretary told me that the C.M. is interested to amend the rule, you please submit the file urgently".

The former Principal Secretary to the Chief Minister, Shri J. D. Gupta, stated that when he put up the concerned file regarding the proposed amendment to the Rules regarding permission to the detenus to apply for appearing in examinations, he got the impression that the Chief Minister knew the background. Shri Bhambri himself in his deposition before the Commission said that in recording the relevant note in the file he was only complying with the express wishes of the Chief Minister, who had told him that the particular instruction was in accordance with the orders from "higher quarters". Shri Bhambri understood the "higher quarters" to mean Shri Bansi Lal, the then Defence Minister. Shri Bhambri had no personal axe to grind and he bore no animus against Shri Pitambar Lal Goyal. Shri Bhambri specifically mentioned the name of Shri Pitambar Lal Goyal in the noting to remind the Chief Minister of the effect that the amendment would have on this particular detenu. Shri Bhambri went on to add that considering the circumstances prevailing then, he thought it prudent to go along instead of forcing the issue to a breaking point which would have denied him the opportunity to do many helpful acts which he had done in protecting the officers.

17.92 The Commission has taken into account the statements of Shri Bhambri as also the statements of witnesses examined by him. The Commission finds that Shri Bhambri had no

personal interest in conducting himself as he actually did and that he himself had no personal grudge against Shri Goyal. It is a matter of record that Shri Bhambri had, in the month immediately following the lifting of the emergency, helped Shri Goyal to get back the office Shri Goyal had been denied earlier. Under the circumstances, it can only be inferred, though it is not proved on positive evidence, that he acted as he did only under instruction from some superior authority. Shri Bhambri says that Shri B. D. Gupta had personally told him that the instruction emanated from 'higher quarters' which he had understood to refer "obviously to the Defence Minister." Shri B. D. Gupta says that he had not instructed Shri Bhambri who might have received his instruction from Shri Bansilal. It thus seems certain that the exercise to change the rule was undertaken by Shri Bhambri pursuant to the wishes of Shri Bansilal, though it has not been possible to establish whether these instructions were received by Shri Bhambri directly from Shri Bansilal or through Shri B. D. Gupta. The fact remains, however, that Shri Bhambri did act, admittedly not on his own volition, but on advice from a higher authority. Having said this in extenuation of Shri Bhambri's conduct, the Commission may point out that changing a rule of the Government only to prejudicially affect an individual citizen is tantamount to setting the authority of the State to the prejudice of an individual. Considered in this light, Shri Bhambri's noting in so far as it refers specifically to the name of Shri Pitambar Lal Goyal was avoidable and should have been avoided. But the Commission cannot be oblivious to the prevailing conditions in the State of Haryana during the period of the emergency. Under those circumstances it would have been difficult for any one to act as a hero. Even so, considering the position of trust and responsibility that Shri Bhambri held at that point of time, his conduct did not conform to the best traditions of the Administrative Service to which he belongs.

17.93 Shri Bansilal was served with a notice under Rule 5(2)(a) of the Commissions of Inquiry Rules and summons under Section 8B of the Commissions of Inquiry Act. He did not file any written statement. He appeared on July 3, 1978, before the Commission and raised certain objections regarding the procedure adopted by the Commission and also raised the plea that he was "not bound legally and Constitutionally" to make any statement before the Commission. The Commission rejected his contention and directed him to take oath and give his version of the case, but he declined to do so. A complaint under Sections 178 & 179 IPC has, therefore, been forwarded to the Chief Metropolitan Magistrate, Delhi, against him by the Commission.

17.94 On the evidence the Commission finds the conduct of Shri Bansilal in regard to this case as reprehensible. For purely personal reasons he grossly misused his position as Chief Minister and abused his authority. He went after three generations of a family to satisfy his appetite for

vengeance. In the process he did not stop short of even ordering the officials under him to get reports fabricated for the sole purpose of denying a young man of that family an office in the Judicial Service which would have made his career. The vendetta that Shri Bansilal nursed against this family did not abate even after he had detained the son, father, uncle and grandfather, and denied Shri Pitambar Lal Goyal the office to which he was entitled. This was during the time he was the Chief Minister of Haryana. When later on he was appointed the Defence Minister in the Government of India, he appears to have pursued his animosity against the Goyal family as borne out by the statement of his successor, Shri B. D. Gupta, who stated before the Commission that the exercise undertaken by Shri Bhambri, the Chief Secretary, to change the rules so as to disable a detenu and particularly Shri Pitambar Lal Goyal, from taking a competitive examination might have been initiated at the instance of Shri Bansilal. There is no evidence before the Commission as to the direct involvement of Shri Bansilal in channelling his wishes to the Chief Secretary, Shri Bhambri—whether directly or through Shri B. D. Gupta. There is little doubt, however, on the evidence, that Shri Bansilal was responsible for the change in the Rules. The Commission notes with amazement the statement made by Shri B. D. Gupta to the effect that even as Chief Minister, he stood in constant fear of being detained under MISA by Shri Bansilal. This typifies the general atmosphere of fear and uncertainty generated by Shri Bansilal in Haryana during the period of the emergency from the effect of which no one from the highest to the lowest was free. An incumbent of the office of the Chief Minister of a State who should have been the very embodiment of justice and fairplay in all his public dealings, has descended as in this case to a petty vindictive level to satisfy a personal grudge against the members of a family.

VI. Use of compulsion and force in the implementation of the Family Planning programme in village Uttawar, District Gurgaon, Haryana

17.95 Uttawar is a village in District Gurgaon, Haryana, inhabited mostly by the Muslims belonging to Meo community. The total population of the village is about 8,000. On November 6, 1976, the village was raided by a large police force comprising 23 reserves (about 700 policemen) armed with rifles, tear-gas equipment, etc., under the leadership of Shri M. K. Miglani, the Deputy Commissioner, Gurgaon and Shri Tek Chand, the Senior Superintendent of Police, Gurgaon. After the raid, the police carried away in trucks about 550 villagers to the police station at Hathin for interrogation. Of these persons, later on, 180 were taken to nearby "family planning centres" at Nuh and Mandkola and sterilised. In the course of the raid, the police could recover from the houses of the villagers some lathis, bhalas and agricultural implements but no fire arms. The police

also arrested 100 villagers under Sections 107/151 Cr. P. C. on charge of assaulting a Patwari.

17.96 This raid on village Uttawar was, it appears, planned deliberately by the State officials because of the opposition of the local population to submit to the sterilisation programme of the State Government. It is seen from the records and evidence available before the Commission that the village Uttawar, an important village in the Mewat region of the Gurgaon district, had become a focal point of opposition to the sterilisation drive which was being enthusiastically carried on in the district. On July 30, 1976, at a meeting of the Chief Medical Officers of Haryana, held under the chairmanship of Shri Harpal Singh, the Health Minister of Haryana, the problem of poor response to family planning programme from the Mewat region of Gurgaon district was discussed and it was decided that some effective technique should be evolved for "bringing the Meos in the fold of family planning".

17.97 Shri Jagbir Singh, Sub-Divisional Officer (Civil), Nuh, has stated before the Commission that the villagers of Uttawar were resolutely opposing the family planning programme of the Government and were not allowing even a single Government official to enter the village for family planning work. According to him, the District Magistrate and the Senior Superintendent of Police, Gurgaon, were keen to tackle effectively the developing situation in Uttawar. Shri Jagbir Singh has further stated that he had always opposed the use of force for dealing with the situation in village Uttawar and was on that account regarded as "a coward" by the then District Magistrate, Shri Miglani, and was accordingly transferred from Nuh Sub-Division shortly before the commencement of the Uttawar operations.

17.98 From the first week of October, 1976 the district authorities commenced preparations for mounting the Uttawar operation. According to Shri Baiwa, Inspector General of Police, in a meeting with him at Chandigarh on October 7, 1976, Shri Tek Chand, the Senior Supdt. of Police, Gurgaon, had informed him that the law and order situation in Uttawar was fast deteriorating and that he wanted to take firm measures to stop the trend. Shri Tek Chand has stated that a meeting was also held in the office of the Deputy Commissioner, Gurgaon, on October 8, 1976, in which the family planning campaign in Gurgaon district in general, and the complexities of the Uttawar situation in particular, were discussed.

17.99 The supply of electricity to Uttawar group of villages was disconnected on October 12, 1976, with a view to pressurising the reportedly recalcitrant villagers. Shri Tevatia, Line Superintendent, Haryana State Electricity Board, has stated that on October 12, 1976, he was ordered by the DC Gurgaon, Shri Miglani, to switch off the supply of electricity to the Uttawar group of villages as these villagers were not co-operating with the family planning programmes of the Government. Shri Tevatia

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has said that in accordance with the DC's instruction, he switched off the supply of electricity to Uttawar village and recorded a note in the Message Book maintained in the office of the Executive Engineer, Palwal, to this effect. This Message Book was produced before the Commission. According to Shri Tevatia, he was later on directed by Shri Pritam Singh, the Superintending Engineer, Faridabad, during his visit to Hathin, to restore the supply of electricity to Uttawar group of villages and he carried out the orders of the Superintending Engineer. Shri Tevatia has further mentioned that on November 5, 1976, he was summoned at Hathin by the Deputy Commissioner, Shri Miglani, and severely reprimanded for restoring the power supply to village Uttawar in disregard of his instruction and asked him to disconnect the electric supply again. He complied with this instruction. According to Haryana State Electricity Board records, no electricity was recorded as consumed by the Uttawar group of villages during the period from October 12, 1976 to October 29, 1976, and again from November 5, 1976 to November 13, 1976.

17.100 Shri Tevatia has also stated that he was detained at Hathin Rest House and beaten up by the police at the direction of Shri Tek Chand SSP.

17.101 Shri S. S. Vohra, Executive Engineer, Operation Division, Palwal, has corroborated the version of Shri Tevatia regarding his detention by the police at Hathin Rest House and stated that he brought the matter to the notice of the then Superintending Engineer, Shri Pritam Singh, and requested him to intervene for Shri Tevatia's release. Shri Vohra has further deposed that electric supply to Uttawar group of villages had remained discontinued during October/November, 1976, and Shri Pritam Singh had ordered its restoration. Shri Vohra has also stated that under the Electricity Act, electric supply can be discontinued only on grounds of default in payment of charges or breach of agreement; disconnection of electricity without any reason is contrary to law. He confirmed that there were no grounds for disconnecting supply of electricity to Uttawar group of villages. Shri Miglani, DC, has, however, denied any knowledge of the disconnection of electricity and stated that he had called Shri Tevatia at the Rest House at Hathin on November 5, 1976, for questioning him about certain allegations of corruption received by him against Shri Tevatia.

17.102 A scrutiny of the tour diaries of Shri Miglani and Shri Tek Chand reveals that both of them had visited Hathin on October 12, 1976.

17.103 On the same day, i.e., October 12, 1976, a case (FIR 112) was registered at Police Station, Hathin under Sections 43/48 DIR and Sections 25/54/59 Arms Act against some of the villagers of Uttawar for unlawful possession of arms. The First Information Report contained account that some of the villagers of Uttawar were indulging in adverse propaganda against the family planning

programme of the Government, were fomenting communal tension and maintaining clandestine links with Pakistan and smuggling arms from the neighbouring State of Rajasthan with a view to subverting the family planning programme of the Government. On October 23, 1976, another case (FIR 113) was registered at the Police Station, Hathin, against some residents of Uttawar for allegedly obstructing the investigation of the earlier case, i.e., FIR 112. The stage was now set for launching punitive action against the villagers of Uttawar.

17.104 Shri Tek Chand, the SSP Gurgaon, prepared a detailed note on October 25, 1976 containing his assessment of the situation in Uttawar. In the note, he referred to the "lawless situation" in Uttawar and registration of two criminal cases by the police against a number of villagers. There was also a reference in his note to the opposition of the villagers to the family planning programme of the Government. Shri Tek Chand has stated before the Commission that he took this note personally to Madhuban (District Karnal), where the Inspector General of Police had come to attend the conference of the Dy. Inspectors General of Police and had a detailed discussion with Shri Bajwa, IGP, and DIG, Hissar Range, and both the IGP and the DIG accepted his proposals for organising the raid. In his note, Shri Tek Chand had mentioned that he wanted to send a large police contingent to village Uttawar for apprehending the accused persons, recovery of arms and motivation for family planning and he needed an additional force of 18 reserves for this purpose. Shri Tek Chand has stated that he had explicitly told Shri Bajwa about the family planning angle of this operation and the latter had raised no objections.

17.105 In the conference of the Deputy Inspectors General of Police held at Madhuban on October 26/27, under the chairmanship of Shri S. S. Bajwa, the role of the police in the implementation of the family planning programmes of the Government was also discussed and it was decided that the Police should "whole-heartedly cooperate" with the Deputy Commissioners and the Chief Medical Officers of the State in making the family planning programme a success and there was no harm in using the Police for motivating persons in support of the sterilisation programme. It was also decided that whenever there was any resistance to "family planning campaign", the police should go into action "erring on the side of having extra strength rather than being under strength....".

17.106 On November 3, 1976, there was another meeting at Gurgaon which was attended by Shri Bajwa, IGP, the District Magistrate, Shri Miglani and the SSP, Shri Tek Chand, and other officers of the District. In connection with this meeting, the District Magistrate had issued a wireless message on October 31, 1976, requiring all the Sub-Divisional Magistrates to come "fully prepared with the relevant data of family planning and allied difficulties, if being faced, for successful implementation of family planning campaign". Both

Shri Bajwa and Shri Miglani have stated that in the meeting, discussions centred round the plan for raiding village Uttawar and there was no discussion about the family planning programme; but Shri Jagbir Singh, SDO (Civil), Nuh, and Shri Tek Chand have said that family planning problems in Gurgaon District did come up for discussion in the meeting. Shri Jagbir Singh has further stated that in the same meeting, he voiced his opposition to the use of force in village Uttawar as he feared that this might cause unnecessary bloodshed.

17.107 On November 4, 1976, Shri Bajwa, IGP, issued a demi-official letter to Shri S. D. Bhambri, the Chief Secretary, Haryana, enclosing the note of SSP, Gurgaon, dated October 25, 1976. In his letter Shri Bajwa mentioned that he had gone into the whole matter in 'great depth' and decided to provide an additional force of 23 reserves as against SSP's demand of 18 reserves, for operations connected with the recovery of arms and arrest of accused persons in village Uttawar. Shri Bajwa has deposed that on the same day, he along with the Chief Secretary met the Chief Minister, Shri B. D. Gupta, and explained to him the gravity of the situation in village Uttawar and the plan of the proposed police action in the village. According to Shri Bajwa, the Chief Minister "gave a green signal" to the proposed police operation. Both Shri B. D. Gupta and Shri S. D. Bhambri have confirmed that such a meeting did take place on November 4, 1976, wherein there were discussions about the Uttawar situation. Shri Bajwa also sent another D.O. letter to the SSP on the same day, i.e. November 4, 1976, wherein he gave detailed instruction to the SSP regarding the manner of deployment of the force.

17.108 Shri Bajwa has said that he sanctioned a large police force of 23 reserves for dealing with the difficult law and order situation in Uttawar and that he had no prior information that the force would also be utilised for sterilisation of the villagers after the raid. In his letter dated November 4, 1976, he had only outlined the twin objects of the police action at Uttawar, i.e. the arrest of the accused persons and recovery of arms and he had never approved of any proposal about the use of force for family planning work. He admitted that he had not contacted his counterpart in Rajasthan for getting further information about the alleged smuggling of arms from Rajasthan to Gurgaon District. Shri Bajwa could not satisfactorily explain the reason why in forwarding the report of the SSP to the Chief Secretary and the Chief Minister along with his D.O. letter, he failed to indicate his objections to the involvement of the police in family planning matters during the raid, even though the SSP's letter referred to the family planning at several places.

17.109 While the preparations for Uttawar operations were afoot, some local leaders like Shri Safed Khan, ex-Chairman, Block Samiti, Hathin and Choudhary Khurshid Ahmed, an ex-Minister and General Secretary of the Haryana Pradesh Congress Committee, made efforts to persuade the

villagers to agree to undergo sterilisation. They also discussed the matter with Shri Miglani, DC. Both Shri Khurshid Ahmed and Shri Safed Khan have stated that they met Shri Miglani and requested him to defer the proposed raid and assured him that the villagers would willingly undergo operations after the sowing season was over; but they were told by the District Magistrate that the latter was not in a position to call off the proposed raid. Shri Khursid Ahmed was advised by the District Magistrate to meet Shri B. D. Gupta, the Chief Minister of Haryana. Shri Khurshid Ahmed has further mentioned that he did meet Shri B. D. Gupta and requested him to postpone the raid as the villagers were willing to undergo the operation after the sowing season was over, but the Chief Minister expressed his unwillingness to do so and made clear that "हरियाणा सरकार के बिकार का सवाल है। रेड तो होगा।" (the raid will take place: the prestige of the Haryana Government is involved).

17.110 The operation at Uttawar was launched with the knowledge and approval of the Chief Minister, Shri B. D. Gupta. The Union Defence Minister, Shri Bansi Lal, was also kept informed of the Uttawar developments. Shri B. D. Gupta in his deposition before the Commission has mentioned that in Haryana the initial sterilisation target of 57,000 for the year 1976-77 was raised to 2,00,000 and he himself was vigorously campaigning for the success of the family planning campaign in the State. He has further stated that he was aware of the growing opposition of the inhabitants of village Uttawar to the family planning programmes of the Government and felt that if opposition in a leading village like Uttawar could be overcome, it would facilitate family planning work in the entire Mewat area. He said that he gave his approval to the police action for the recovery of arms and curbing of lawlessness in village Uttawar.

17.111 Shri Miglani has said that on October 26, 1976, at the express direction of the Chief Minister Shri B. D. Gupta, he met Shri Bansi Lal, the Union Defence Minister, at Delhi and apprised him of the situation prevailing in Uttawar. Shri Miglani's meeting with Shri Bansi Lal on October 26, 1976, has been confirmed by Shri S. D. Bhambri, the Chief Secretary, who had also gone to meet the Defence Minister on the same day in connection with some other matter. Again on November 5, 1976, i.e. immediately before the day fixed for the raid, Shri Miglani and Shri Tek Chand had met Shri Bansi Lal and apprised him of the situation in Uttawar. According to Shri Miglani, the proposed action in Uttawar had Shri Bansi Lal's blessings. Shri Miglani has stated that he had met the Defence Minister on the direction of the Chief Minister; but Shri B. D. Gupta has stated that he had not asked Shri Miglani to meet the Defence Minister. Shri B. D. Gupta admitted that some officers of the Haryana Government used to meet the Defence Minister during their visits to Delhi. Shri Tek Chand accepts the fact of his visit to Delhi on November 5, 1976, but denies any meeting with Shri Bansi Lal.

17.112 Early in the morning of November 6, 1976, a large police force led by the SSP and the Deputy Commissioner encircled village Uttawar. According to Shri Miglani, though the SSP was in overall charge of the operations, he also decided to remain present for ensuring the "maintenance of peace". He also provided services of six Magistrates.

17.113 The raiding party, according to the testimony of some of the villagers, carried on indiscriminate house-searches during which they reportedly destroyed the household property of the villagers. One Shri Haji Chhutmal, son of Shri Kalai Khan, has stated that during the month of October, 1976, the Deputy Commissioner and the Senior Superintendent of Police used to visit the village frequently and ask the villagers to undergo sterilisation. Shri Haji Chhutmal has further mentioned that in the early hours of the morning of November 6, 1976, the police had asked the villagers over the microphone to gather near the bus stand and the villagers out of fear obeyed the order. From the bus stand the villagers were taken by trucks to the Hathin Police Station for interrogation. According to him, some of the villagers were arrested by the police on false charges and some others were sent for sterilisation to the health centres.

17.114 Shri Mauja, son of Shri Chahat, who was arrested by the police, stated that since he had already been sterilised, he was arrested along with other under Sections 107/151 Cr. P.C. on false charges. He was amongst the 100 persons arrested on November 6, 1976, on charge of assaulting a Patwari.

17.115 A villager named Shri Chahat, son of Shri Phool Khan, an old man of 70 years, has stated that after the raid on November 6, 1976, he and a number of villagers were forcibly taken to Mandkola hospital for sterilisation. Shri Chahat has further stated that the Doctor in the Family Planning Centre initially refused to sterilise him because of his advanced age, but ultimately had to operate on him because of the pressure of the police and revenue officials.

17.116 Shri Abdul Rehman alias Lala, son of Shri Shai Khan, 25 years, has stated that after the raid on November 6, 1976, he was taken to the Mandkola Primary Health Centre on November 7, 1976, along with others and forcibly sterilised there, despite his plea that he had only one issue, a daughter. He has also stated that initially the Doctor had refused to operate on him, but was later on pressurised by the police to undertake the operation.

17.117 The statements of the villagers regarding their forcible sterilisation are corroborated by the evidence of the Medical officers attached to the Health Centres at Nuh and Mandkola. Doctor S. C. Kalra, Medical Officer, Primary Health Centre, Mandkola, has stated that on November 7, 1976, a large number of persons were forcibly brought to the Mandkola Health Centre in trucks by the police for sterilisation. He has also mentioned that he

refused to operate upon one old villager called Shri Chahat, but was ultimately forced to do so by the revenue and police officials present at the health centre. Dr. M. L. Laroia, Medical Officer of the Primary Health Centre, Nuh, has also deposed that on November 7, 1976, a number of villagers from Uttawar were brought to Nuh Primary Health Centre for sterilisation. Referring to the pressure mounted on the villagers for forcible sterilisation, Smt. S. Laroia, another Medical Officer of Nuh Health Centre, has stated "at times the villagers used to beg for operation in order to escape the officials' tyranny". From the records of Nuh and Mandkola Health Centres, it is seen that between November 6 and November 9, 1976, 180 villagers of Uttawar were sterilised at these two Health Centres.

17.118 The general pressure exerted during the emergency by the civil authorities on the Medical Officers to sterilise even ineligible cases has been stressed by Dr. O. P. Kapoor, District Family Planning Officer, Gurgaon, and Dr. K. B. Lal, the then Chief Medical Officer, Gurgaon, in their depositions before the Commission. Dr. Kapoor has stated before the Commission that he used to receive reports from the Doctors of the District that they were being pressurised by the civil authorities to operate on ineligible cases. As the Civil officers were keen to achieve the sterilisation quotas fixed for them by the District Magistrate, they habitually brushed aside even genuine objections raised by the Doctors. According to him, the Doctors were in a predicament : they could not annoy the executive authorities as the Annual Confidential Reports of the Doctors were routed through the Sub Divisional Officers and the Deputy Commissioners.

17.119 Dr. K. B. Lal, the Chief Medical Officer, Gurgaon, has admitted that there was an element of coercion in the family planning programmes which were being carried on with great fanfare in Gurgaon during the year 1976. He has disclosed that the sterilisation target of the District for the year 1976-77 was twice revised upwards. He has also said that during the year 1975-76, some of the District Officers including the Deputy Commissioner, Shri Miglani, received prizes for their excellent performance in family planning work. Dr. Lal has confirmed that there was simmering resentment among the Doctors against the entries in their Annual Confidential Rolls being recorded by the civil authorities in accordance with Haryana Government's instruction authorising the SDOs and DCs to enter remarks in the Annual Confidential Rolls of the Doctors regarding their integrity and cooperation with the authorities.

17.120 After the raid on November 6, 1976, the SSP sent a consolidated report regarding the Uttawar operation to IGP through a wireless message. In the message it was, *inter alia*, mentioned that after the raid about 550 men were rounded up and brought for interrogation and 'eligible couples were sorted out by SDM Nuh and motivated for Vasectomy operations'. It is seen from the message that no firearms were recovered after the raid.

17.121 Shri Bajwa, IGP, marked the signal to the Chief Minister and it was duly seen by the Chief Minister. Shri Bajwa has tried to explain that he did not approve of the forcible sterilisations that were being carried on in the wake of the police operation and felt unhappy. He had endorsed the message received from the SSP to the Chief Minister. On a query from the Commission as to why he did not initiate action against the officers who disregarded his instruction, he admitted that this was an omission. He tried to explain that in the prevailing situation in Haryana it was difficult for the IGP to initiate action even against the Superintendents of Police many of whom were maintaining direct links with the 'high-ups'. He produced before the Commission a confidential letter written to him by the then Home Secretary, Haryana Government, in which the IGP was advised not to initiate action against any Superintendent of Police without prior approval of the Chief Minister.

17.122 Giving his version of the events of November 6, 1976, Shri Miglani has stated that though he remained present at the time of the commencement of the raid, he left in the afternoon to supervise arrangements in connection with the visit of Smt. Abida Begum, wife of the President of India, to Faridabad. But before leaving for Gurgaon, he left instructions with SDM, Nuh, Shri Gajraj Singh, that sterilisation should not be performed on persons detained after the raid. Shri Miglani has further mentioned that Shri Gajraj Singh came to meet him at Faridabad next day and informed him that it had been decided by the Senior Superintendent of Police, in consultation with the IGP, that operations should be performed on villagers who were willing. Shri Miglani could not adequately explain as to why he, the head of the District Administration, left the scene when the operation was still on, and also had allowed the other Magistrates, except SDM, Nuh, accompanying the police party to return to their posts before the police operation was concluded. Shri Tek Chand, the SSP, has, however, disputed the statement of Shri Miglani that the police, on their own, were taking steps for motivating the people for sterilisation. According to Shri Tek Chand, this family planning work was done by the Revenue officials at the instance of the District Magistrate and the police had nothing to do with it.

17.123 Notices under Rule 5(2)(a) of the Commissions of Inquiry Rules and summons under Section 8B of the Commissions of Inquiry Act were issued to the IGP, Haryana, Shri S. S. Bajwa, District Magistrate of Gurgaon, Shri M. K. Miglani, and Senior Supdt. of Police of Gurgaon, Shri Tek Chand. All of them submitted their statements and also availed of the opportunities given to them for explaining their defence.

17.124 Shri Bajwa has urged before the Commission that his participation and involvement in providing the additional force in conducting the raid on the village Uttawar was limited only to the extent of the recovery of the arms alleged to have been hidden in the village by the miscreants and the

arrests of persons allegedly involved in the cases that were pending against them on the police books. He, however, has not been able to explain as to how he could limit his interests only to the recovery of arms and arrests of some individuals when the report given to him personally by the SSP, Shri Tek Chand, on October 26, 1976 at Madhuban, where he had met him, contained several specific references to the family planning and its implications in the raid on the village of Uttawar contemplated by the District authorities. Even when he had received the consolidated final message after the raid from the Senior Superintendent of Police regarding the number of people arrested, the nature and type of weapons recovered and the number of people sterilised, he does not seem to have taken any action against the Police in connection with the mass sterilisations that had followed the raid. The Commission is not prepared to accept the version of Shri Bajwa to the effect that he was not aware of the family planning import of the raid and that he had taken no steps calculated to facilitate the promotion of the family planning programme. All indications on the basis of oral and documentary evidence are that Shri Bajwa was fully aware of what was intended and did happen and agreed with the consequential actions that followed the raid. The Commission accepts his plea that he had been rendered considerably ineffective even in the handling of his officers as it emerges from the letter that he had received from the Home Secretary to the Government of Haryana and which was produced by him before the Commission. The Commission would like to observe that it may not be expected on the one hand the leadership of a Force to function effectively if, on the other, steps are also taken by the Government to undermine the leadership.

17.125 The Commission has taken into account the explanations offered by Shri Miglani. He appears to have used his position as the Head of the District to order the disconnection of the electric supply to the village which stands proved on the basis of the contemporaneous record maintained by Shri Tevatia. There is no reason to doubt the veracity of this documentary evidence. Shri Miglani was as much a party to the raid as the others were and to everything else that flowed from it. His plea that the sterilisations were subsequent to his leaving the scene and against his express disapproval does not appear to be true considering the various factors that have come on record. It is not believable that

as things were in Haryana during the emergency, sterilisation of such a large number of persons rounded up after the raid of the village during which raid the District Magistrate himself was present, could have taken place without the previous knowledge and concurrence of the District Magistrate. Shri Miglani was interested in fulfilling the family planning target that had been set for him from the State HQ. The raid on the village followed by the bulk sterilisation must indeed have been a very welcome addition to his family planning effort.

17.126 Shri Tek Chand, as the SSP, Gurgaon was an active participant in the events leading to the raid and following it. The FIR recorded on October 12, 1976 in Police Station Hathin was a prelude to the raid that was planned; and as the SSP of the District he must have known its full implications. His explanation that the sterilisations that followed the raid were at the instance of the District Magistrate alone and he himself had no hand in it does not appear to be credible. The villagers of Uttawar were carried to the sterilisation centre in trucks under police escort.

17.127 In the view of the Commission there is no doubt that the three officers were privy to the raid which was planned to overcome the opposition of the inhabitants of the village and to bring them within the fold of the family planning programme. None of them stood to gain personally in these operations which were planned at the behest of the higher authorities. These officers were powerless to resist the express wishes of the Government of the time. The Commission, therefore, takes a lenient view of the matter as far as the officers themselves are concerned. This is, however, not to minimise the gravity and illegality of what was done to the people of the village both in terms of the raid, the sterilisation and the cutting off of electricity. It may be said in passing that the large concentration of power in the hands of the District Magistrate and the Sub Divisional Officers with regard to the career prospects of officials belonging to the other Departments, insofar as these were governed by the favourable confidential reports of the District Magistrates and Sub Divisional Officers on the work and conduct of these officials, appears to have been in no small measure responsible for the willingness of a large body of officials to carry out improper or unauthorised directions emanating from the District and Sub Divisional authorities.

CHAPTER XVIII

Abuse of authority—complaints on service matters including premature retirements, dismissals/ removal from service and supersession during Emergency

18.1 One of the terms of reference of the Commission is to look into the cases of misuse of authority and abuse of power. This is in the nature of a very wide-ranging and omnibus term of reference, under which many items can be indisputably fitted.

18.2 Some of the cases of a general nature falling under this category and which the Commission felt, would evoke a nation-wide interest, have been heard and the Commission's findings have been set-down in appropriate Chapters. One aspect of the abuse of authority and misuse of power, which had evoked the largest number of complaints, deals with the treatment meted out to public servants in so far as it related to their service conditions generally and with particular reference to their summary dismissal, compulsory/premature retirements and supersessions. In view of the number of complaints, under this category, and also the number of people affected by the actions taken by the different Ministries and State Governments *vis-a-vis* their respective employees, the Commission has thought it fit to set-down certain broad aspects in that behalf in this Chapter.

18.3 The rules governing the question of premature retirement from service of public servants as they stood before the emergency, empowered the Government to retire prematurely Government Servants holding Class I & II posts, at the age of 50 years and those holding Class III posts or other posts, at the age of 55 years or on completion of 30 years service whichever was earlier, by giving 3 months' notice or 3 months' pay in lieu thereof. To prevent any arbitrary use of the powers, the Home Ministry had in the instructions issued from time to time, recommended the appointment of Screening Committees for different grades to screen the cases at least 6 months before the date of eligibility of the concerned Government Servant for premature retirement. Separate Reviewing Committees were also directed to be constituted to consider appeals of government employees against the orders of premature retirement. The guidelines suggested for Screening Committees laid down that the criteria for recommending premature retirement of Government Servants should relate to doubtful integrity of the employee concerned and/or ineffectiveness or incompetence of the employees for the office they were holding. The rules applicable to the government employees in different States broadly conformed to the Central Govt. rules.

18.4 Immediately after the proclamation of emergency the Department of Personnel & Administrative Reforms in their O.M. No. 25013/6/75-Estt. (A) dated the 10-7-1975 reiterated the above-

mentioned instructions and urged upon all the Ministries and Departments to enforce those instructions strictly, in view of the imperative need to improve the efficiency in all government offices. The State Governments were also advised similarly *vide* D.O. letter No. 25013/6/75-Estt. (A) dated 11-7-1975 issued by the Department of Personnel & Administrative Reforms. Quarterly returns were prescribed for reporting on action taken for retiring the government servants who had outlived their utility and who were of doubtful integrity. This subject came up for discussion in the Conference of Chief Secretaries held on 7th and 8th May, 1976 where it was emphasised that the Government should have powers to retire in public interest an officer with stained record or reputation or efficiency without having to wait for the then prevailing unduly long minimum age of service.

18.5 During the period of emergency, according to the information so far received from the Central Government Departments and the State Governments as many as 25,962 public servants and employees in the Public Sector Undertakings were prematurely retired. Though the Commission has not been able to ascertain the figures under this head over the previous years, there is no doubt that the figures of premature retirement during the emergency reached an all time high level.

18.6 Since 4,232 complaints under this head were received by the Commission, it was decided that the Commission should address all the Chief Secretaries of State Governments and Secretaries to the Ministries on the subject. Accordingly, D.O. letter No. F. 15020/10/77-Coord/SCI & F. 15020/11/77-Coord/SCI dated the 25th August, 1977, from the Secretary of the Commission were issued to all concerned. The letters suggested the setting up of panels to review all such cases in an effort to ensure that injustice done, if any, to any of the employees, should be undone and to send a report on the action taken to the Commission. Besides, the Secretary of the Commission had also visited various State Capitals and in the course of his discussions had impressed on the Chief Secretaries the need for ensuring that the members nominated on the proposed Review Committees/Panels, should not be those who were associated earlier with the decision relating to premature retirements summary, dismissals etc. The review undertaken by the State Governments and Ministries were not to be confined only to the specific complaints but was intended to be a total review of all the cases coming under

that category. Subsequently, State Governments/Ministries were requested to send us information showing the total number of cases in this category, cases reviewed, cases in which orders were reversed and the number of cases pending review. The State Governments who appointed panels or reconstituted committees to review the cases as suggested by the Commission are named below :

TABLE I

Sl. No. Name of the State

1. Assam
2. Bihar
3. Gujarat
4. Haryana
5. Himachal Pradesh
6. Madhya Pradesh
7. Manipur
8. Meghalaya
9. Nagaland
10. Rajasthan
11. Orissa
12. Tamil Nadu
13. Uttar Pradesh
14. Andaman & Nicobar Islands
15. Dadra & Nagar Haveli
16. Pondicherry
17. Goa, Daman & Diu
18. Mizoram

Other State Governments took up through normal channels. Some State Governments also issued general orders for reinstatement of employees of certain categories.

18.7 In regard to the Ministries of Central Government, the Ministry of Home Affairs have informed the Commission that the policy as approved by the Cabinet *inter alia* provides that representations from those who had been removed/prematurely retired during the emergency, would be specially looked into to ensure that over-rigorous standards were not applied in the case of all those who had been retired on grounds of ineffectiveness and the retirement was not resorted to as a measure of political vendetta. In cases where representations against premature retirement had been disposed of during the emergency, a further representation would be entertained so that the matter could be considered afresh. It was further decided that the members of the Committee, who considered the representations against premature retirement should be different from the members of the Committee on the basis of whose recommendations premature retirement was ordered in the first place.

18.8 Rules and guidelines relating to premature retirement were reviewed by the Central Government after the emergency. It is learnt that the provisions of the Central Government Rules as existed before emergency remain unaltered but certain modifications have been made in the guidelines.

18.9 Pursuant to the request made by the Commission to State Governments and Central Ministries and the instructions/orders consequently issued by the Central Government and the State Governments, review of premature retirements have been completed in large number of cases. According to the information received so far from various authorities, the orders of premature retirement have been reversed in 14,187 cases against the total number of 25,962 cases of premature retirements. Detailed information in regard to the result of review of these cases is given in the following table :

TABLE II

Name of State/UT Admn/Central Govt.	No. of cases	Cases reviewed	Cases in which orders were reversed or reversal of orders recommended	Cases pending review	Remarks
1	2	3	4	5	6
Andhra Pradesh	4648	4175	4135	473	Position as on 1-6-78
Assam	335	190	74	145	
**Bihar	1451	763	266	Nil	
Gujarat	682	*	56	*	
Haryana	57	*	Nil	57	
**Himachal Pradesh	109	34	9	33	
**Jammu & Kashmir	88	14	6	73	
**Karnataka	779	167	11	391	
Kerala	71	69	62	2	
**Madhya Pradesh	2819	2519	794	Nil	
**Maharashtra	3613	3530	2272	33	
**Manipur	9	Nil	Nil	1	
**Meghalaya	14	Nil	Nil	6	
Nagaland	43	43	9	Nil	
Orissa	643	643	394	Nil	

1	2	3	4	5	6
Punjab	664	594	453	70	Gazetted officers only
Rajasthan	3087	3059	2193	28	
**Sikkim	5	Nil	Nil	Nil	
**Tamil Nadu	651	270	64	30	
Tripura	25	25	9	Nil	
**Uttar Pradesh	521	334	38	134	
West Bengal	*	*	*	*	
<i>UT Adms.</i>					
Andaman & Nicobar Islands	48	40	18	8	
Arunachal Pradesh	14	14	Nil	Nil	
**Chandigarh	6	5	4	Nil	
Dadra & N.H.	1	1	Nil	Nil	
Delhi	52	23	6	1	
Goa, Daman & Diu	19	19	5	Nil	
Lakshadweep	Nil	Nil	Nil	Nil	
Mizoram	Nil	Nil	Nil	Nil	
Pondicherry	31	7	2	2	
**Ministries/Depts. of Government of India	5477	*	3307	Nil	
Grand Total	25962	16538	14187	1488	

Notes: 1. Asterisk (*) denotes that the information asked for has not been received.

2. The information relating to Ministries/Departments of the Government of India is based on the reply to Lok Sabha Starred Question No. 594 dated 5-4-1978 by the Ministry of Home Affairs.

3. Double asterisk (**) denotes that these States have confined their review only to the cases in which representations were received by the authorities.

18.10 Immediately after proclamation of emergency certain organisations including the Rashtriya Swayam Sevak Sangh, Jamait-E-Islami, Anand Marg and CP(ML) were banned under the provisions of Rule 33 of the Defence and Internal Security of India Rules 1971, by Government of India. This was followed by an advice from the Government of India to all Ministries/Departments that employees who were found to have connections with the banned organisations were liable to be dealt with suitably under departmental proceedings and in appropriate cases action could also be considered against them under proviso (c) of clause 2 of Article 311 of the Constitution. This therefore, led to dismissal of Government employees both under the Central Government and State Governments, who were suspected to have continued their connections with the banned organisations or who were detained under MISA etc. It also appears that the provision under the rules for termination of services were taken advantage of in various Public Sector Undertakings and other Government organisations for easing out temporary employees without taking recourse to

disciplinary proceedings. The information so far collected from the Ministries and State Governments show that during this period as many as 4,534 employees were removed from service.

18.11 Ban on the above-mentioned organisations was removed after revocation of the emergency. In the policy directive issued by the Government of India, Department of Personnel and Administrative Reforms, all the Ministries were advised to review the cases of employees dismissed or removed from service during the internal emergency, under proviso (c) of Article 311 (2) of the Constitution. Subsequent to the issue of the above-mentioned directive and the request made by the Commission to all the Ministries and State Governments 1,885 employees have since been taken back in service as per the information received so far from concerned quarters. Detailed position regarding the result of review of these cases which also includes cases of dismissal as a result of disciplinary proceedings in respect of some States and Ministries is indicated in the following table :—

TABLE III

Name of State/UT Admn./Central Government	No. of cases	Cases reviewed	Cases in which orders were reversed or reversal of orders recommended	Cases pending review	Remarks
1	2	3	4	5	6
Andhra Pradesh	Nil	Nil	Nil	Nil	
Assam	315	135	104	180	
Bihar	Nil	Nil	Nil	Nil	
Gujarat	Nil	Nil	Nil	Nil	
Haryana	41	5	5	36	

1	2	3	4	5	6
Himachal Pradesh	Nil	Nil	Nil	Nil	
Jammu & Kashmir	13	13	Nil	Nil	
Karnataka	Nil	Nil	Nil	Nil	
Kerala	Nil	Nil	Nil	Nil	
**Madhya Pradesh	58	47	46	7	
**Maharashtra	1113	*	7	Nil	
Manipur	Nil	Nil	Nil	Nil	
**Meghalaya	7	Nil	Nil	3	
Nagaland	*	*	*	*	
Orissa	1	Nil	Nil	1	
Punjab	5	4	4	1	
Rajasthan	30	*	3	*	
Sikkim	Nil	Nil	Nil	Nil	
Tamil Nadu	2	2	2	Nil	
Tripura	*	*	*	*	
Uttar Pradesh	111	11	8	100	
West Bengal	*	*	*	*	
<i>U.T. Admins</i>					
Andaman & Nicobar Islands	Nil	Nil	Nil	Nil	
Arunachal Pradesh	1	Nil	Nil	1	
Chandigarh	2	2	2	Nil	
Dadra & N.H.	Nil	Nil	Nil	Nil	
**Delhi	70	21	13	10	
Goa, Daman & Diu	9	9	Nil	Nil	
Lakshadweep	Nil	Nil	Nil	Nil	
Mizoram	Nil	Nil	Nil	Nil	
Pondicherry	Nil	Nil	Nil	Nil	
Ministries & Departments of Government of India	2756	2592	1691	7	
Grand Total	4534	2842	1885	346	

Notes.— 1. Asterisk (*) denotes that the information asked for has not been received.

2. Double asterisk (**) denotes that these States have confined their review to the cases in which representations were received by the authorities.

3. Total of column 3 and 5 does not tally with figures in column 2 as the reviews in many States and Ministries have been confined to the cases in which representations were received by the authorities.

18.12. According to the information so far received from the concerned quarters, the total number of employees both in the Central Government and the State Governments affected by supersession comes to 8367. The reports received reveal that by end large supersessions were caused on the basis

of the recommendations of the Departmental Promotion Committees. As a result of the reviews made by the authority on the request of the Commission in 72 cases orders have been reversed. The detailed position regarding the result of review of cases is indicated in the following table :

TABLE IV

Name of State/UT Admn Central Govt.	No. of cases	Cases reviewed	Cases in which orders were reversed or reversal of orders recommended	Cases pending review	Remarks
1	2	3	4	5	6
Andhra Pradesh	*	*	*	*	
Assam	Nil	Nil	Nil	Nil	
Bihar	17	*	*	17	
Gujarat	Nil	Nil	Nil	Nil	
Haryana	155	Nil	Nil	155	
Himachal Pradesh	Nil	Nil	Nil	Nil	
Jammu & Kashmir	*	*	*	*	
Karnataka	24	13	Nil	Nil	
Kerala	Nil	Nil	Nil	Nil	
**Madhya Pradesh	109	10	1	39	
Maharashtra	7016	Nil	Nil	Nil	

1	2	3	4	5	6
Manipur	Nil	Nil	Nil	Nil	
Meghalaya	Nil	Nil	Nil	Nil	
Nagaland	*	*	*	*	
Orissa	1	*	*	*	
Punjab	89	58	31	27	
**Rajasthan	536	3	3	Nil	
Sikkim	*	*	*	*	
Tamil Nadu	Nil	Nil	Nil	Nil	
Tripura	*	*	*	*	
**Uttar Pradesh	89	72	32	Nil	
West Bengal	*	*	*	*	
<i>U.T. Adms</i>					
Andaman & Nicobar Islands	Nil	Nil	Nil	Nil	
Arunachal Pradesh	2	2	Nil	Nil	
Chandigarh	Nil	Nil	Nil	Nil	
Dadra & N.H.	*	*	*	*	
Delhi	*	*	*	*	
Goa, Daman & Diu	Nil	Nil	Nil	Nil	
Lakshadweep	*	*	*	*	
Mizoram	Nil	Nil	Nil	Nil	
Pondicherry	*	*	*	*	
Ministries/Depts. of Government of India	329	190	5	Nil	
Grand Total	8367	348	72	238	

Notes :— 1. Asterisk (*) denotes that the information asked for has not been received.

2. Double asterisk (**) denotes that these States have confined their review to the cases in which representations were received by the authorities.

3. Total of column 3 and 5 does not tally with figures in Column 2 as the review in many States and Ministries has been confined to the cases in which representations were received by the authorities.

18.13 Commission had also along side extended its attention to getting a fresh review of some other service matters done through the State Governments/Ministries of Central Government in an effort to see how much of the wrong if any alleged by the complainants during the emergency could be undone. Accordingly the Commission had addressed various State Governments and the Ministries of the Government of India to restore to the incumbents, arrears of pay wherever the same may have fallen due because of their failure to fulfil the stipulations of the authorities in connection with the Family Planning drive *vide* letter No. SC/FP/T-4/1/77 dated August 8, 1977.

18.14 It is very gratifying to note that the response to these requests of the Commission from State Governments/Ministries of the Government of India, has been of a positive and helpful nature. A large number of employees have got back their dues and quite a few of them have been re-instated as the table given above would show.

18.15 The review of the compulsorily retired and dismissed cases of employees was done by certain State Governments through Judges, certain others through Cabinet Committees and yet some others through Committees of senior officials. The Commission has no reason to doubt that such of the people whom it has not been possible to take back in service, must be cases in which nothing more can be done because of the inherent weaknesses of the case themselves. This review undertaken by the State Governments/Ministries would by themselves dispose of a very large number of complaints received by the Commission and which might have got categorised as III, IV and V. In the process, cases of many persons affected, but who may not have chosen to complain have also received a second look with whatever benefits that might have conferred on the concerned individuals. These various steps adopted by the Commission, must have taken care of a very large number of complaints falling under the category of abuse of authority and misuse of powers.

CHAPTER XIX

Arrests and detentions during the Emergency

Introduction

19.1 The Maintenance of Internal Security Act was passed by the Parliament in the year 1971. The Statement of Objects and Reasons as presented before the Lok Sabha on June 3, 1971, by the then Minister in the Ministry of Home Affairs, Shri K. C. Pant read as below :—

"In view of the prevailing situation in the country and developments across the border, there is need for urgent and effective preventive action in the interest of national security. It is, therefore, considered essential to have power of preventive detention to deal effectively with the threats to the defence of India and to the security of India, specially from external sources, espionage activities of foreign agents. Since existing laws available to deal with the security have not been found to be adequate, the Maintenance of Internal Security Ordinance, 1971, has been promulgated. It is now proposed to replace the Ordinance by an Act."

Sd/-

K. C. PANT"

19.2 Though from the Statement of Objects it appeared that the unusual power of preventive detention was being sought by the Government primarily for dealing effectively with threats to the defence of India from external sources and espionage activities of foreign agents, with particular reference to Bangladesh affairs, Members of almost all Opposition Parties were unanimous in voicing their deep concern against the Government assuming such wide powers through this Bill. Below are a few extracts from the speeches made in the Lok Sabha by some Opposition Members :—

"SHRI ATAL BEHARI VAJPAYEE (June 16, 1971) translated from Hindi : "This is the beginning of a police State and a blot on democracy. It is the first step towards dictatorship... These powers will not be used against foreign spies but against political opponents."

"SHRI JYOTIRMOY BASU (June 16, 1971) : "The Prime Minister... has advisers into whose hands she is playing to consolidate her position and to keep herself in power and to perpetuate the continuous political blackmail... This is a semi-fascist method of keep herself and her party perpetually in power."

"SHRI AMRIT NAHATA (June 17, 1971) : ".....This bill when enacted will create far more difficulty because the persons...who would be entrusted with vast powers would harass the people far more than what they have already done."

"SHRI KRISHNA MENON (June 17, 1971) : "....and here we are arming the Executive with every power that is required to exercise quasi-judicial functions without any way of checking it. This is unguided, unrestrained, uncontrolled, undirected arbitrary power. This is the beginning of the fascist rule."

"SHRI L. K. ADVANI (June 18, 1971) in Rajya Sabha : "I assure you that this Preventive Detention Law or MISA will be used against Shri Morarjee Desai, Shri Shyam Dhar Mishra and Shri Gurupadswamy."

"SHRI PILOO MODI (June 16, 1971) : "I am more than ever convinced that this Government and this Party cannot be entrusted with the powers that it is demanding today..... If you were to read the history as to how democratic movements have grown throughout the century, it has been by this one principle of *Habeas Corpus* that all democratic societies are evolved. What does this Bill do?..... It snuffs out *Habeas Corpus* in the middle of 20th century after 25 years of Independence..... To deny this country *Habeas Corpus* is to rejuvenate the Star Chamber.....without *Habeas Corpus* there is no democracy."

"SHRI FRANK ANTHONY (June 17, 1971) : "I know, the District Magistrates in Delhi do not take the trouble to write an order. The liberty of the Indian citizens is not worth a written order. Now what has the District Magistrate to do? All he has to do is to merely use one line. In my opinion in order to maintain the security of the State, Mr....your name may be there, Sir, if you are sitting in the Opposition, ... should be detained." He may add another line that 'no facts are being given in the public interest.' But he will not disclose any facts. The matter is completely sealed, the courts are completely ousted."

"SHRI SOM NATH CHATTERJEE (June 17, 1971) : "It is a shameless exhibition of hunger and greed for more

power. They are taking upon their hands this black Act, this piece of legislation which does not provide even the semblance of security to an individual in this country. In the name of refugee influx, in the name of the security of the State, which all remain undefined, this power has been given in the hands of an ordinary petty bureaucrat who is prone to act at the behest of the party in power."

"SHRI N. K. KRISHNAN (June 25, 1971) : "The experience has amply proved that such sweeping draconian powers in the hands of the bureaucracy, have been used for 20 years and naturally will be used, not against anti-national elements at the top but against political workers, against trade union workers. We say that these powers are going to be used not against really people who endanger the security of this country but against political workers, against trade union leaders."

"SHRI SHAMIM AHMED SHAMIM (June 17, 1971) : "The provision for an Advisory Board is being presented to us on a platter. We say that these Advisory Boards will be of no effect because you have deprived them of the very process of law, the legal process which is the basis of our administration and justice."

"SHRI SHYAM NANDAN MISHRA (June 17, 1971) : "I would like to say that even important instruments like the CBI are being used for partisan purposes. Recently there had been a great furore in one of the State Legislatures that CBI was being used to shield party men or cronies of the ruling Party and to victimise its opponents. The charge related to no less a person than the Prime Minister of India."

19.3 To allay the apprehensions expressed by Members of Opposition Parties, the Minister in the Ministry of Home Affairs, Shri K. C. Pant repeatedly gave the assurance that MISA will not be used against political parties and enough safeguards had been incorporated in the bill to prevent its misuse. He emphasised that the power of detention by a subordinate authority was limited to 12 days only and thereafter the detention would require confirmation by the Advisory Board. The right of the High Courts to issue writ of *Habeas Corpus* was also not taken away. In his reply to the debate in Rajya Sabha on June 29, 1971, he said, "I can also assure that anyone functioning in accordance with the law of the land whether he is engaged in a labour movement or a Kisan movement or other legitimate political activity has nothing to fear from this measure." On June 25, 1971, he again said in the Rajya Sabha, "It is a serious assurance that this bill will not be used against legitimate trade union activities or legitimate political activity."

19.4 All these solemn assurances given on behalf of the Government were totally belied. Soon after

the declaration of Emergency, District Magistrates were authorised to pass order of detention on satisfaction reached by them. In the States in which the Commissioner of Police was ex-officio a Magistrate, the Commissioner of Police became automatically invested with authority to pass order of detention. After the proclamation of the state of emergency by the President on June 25, 1975, the MISA, 1971 was amended by Presidential Ordinances, dated June 29, 1975 and July 15, 1975. These two Ordinances were converted into Maintenance of Internal Security (Amendment) Act No. 39 of 1975 on August 5, 1975. The main amendment was intended to introduce Section 16A and Section 18 in the MISA. The effect of these amendments was that :—

- (i) The new Section 16A contained special provisions for dealing with the emergency. The provisions of the existing MISA regarding communication of grounds of detention to the detenu and functioning of the Advisory Boards (Sections 8 to 12) were made inapplicable to persons detained under Section 16A for effectively dealing with the Emergency. Instead the State Governments were given the powers to review the detentions within 4 months of the date of detention and thereafter at intervals not exceeding 4 months.
- (ii) The new Section 18 read "No person (including a foreigner) detained under this Act shall have any right to personal liberty by virtue of natural law or common law, if any."

19.5 Other amendments to the MISA were enacted by Presidential Ordinances, dated October 17, 1975 and November 16, 1975, which were replaced by the Maintenance of Internal Security (Amendment) Act No. 14 of 1976, on January 25, 1976. These amendments to Section 16A provided that the appropriate government or officer may act on the basis of information and materials in its or his possession without communicating or disclosing any such information and material to the person concerned or affording him any opportunity of making any representation. [Section 16A(5)]

19.6 Secondly, the grounds on which an order of detention is made and any information or materials on which such grounds are based shall be treated as confidential and shall be deemed, to refer to matters of State and to be against public interest to disclose. [Section 16A(9)(a)]

19.7 Thirdly, no person against whom any order of detention is made shall be entitled to the communication or disclosure of any such ground, information or material. [Section 16A(9)(b)]

19.8 These amendments completely metamorphosed the character of MISA. The principal safeguards against the abuse or misuse of the extraordinary powers of preventive detention conferred on the Government and its subordinate officers, as enacted in the original Act were (i) scrutiny of the

detenu's case by a quasi-judicial authority, namely, the Advisory Board; (ii) mandatory communication of full grounds of detention to the detenu normally within 5 days of his detention; and in exceptional circumstances within 15 days; (iii) the right of the detenu under natural law or common law to move the High Court in a writ of Habeas Corpus against the order of detention passed against him. These three main safeguards and other minor ones were totally withdrawn by introduction of Section 16A and Section 18 in the MISA.

19.9 The freedom of the executive from all restraints of judicial scrutiny led directly to the large scale abuse of authority and misuse of powers during the emergency.

19.10 The purpose for which MISA could be used to detain a person was laid down in Section 3(1) of the Act. This was never amended during the period of the emergency and the amendments incorporated during emergency never gave any licence to the detaining authority not to record the grounds of detention against a person or to detain anyone on grounds other than those covered by Section 3(1) of the Act or to pass orders of detention on palpably inadequate or on flimsy grounds. But during the period of emergency, a large number of persons all over the country was detained often without any satisfaction of the authority and without any grounds and their detentions were confirmed by the State Governments. Sometimes the grounds were inadequate or irrelevant.

19.11 Under the amended provisions of the MISA, the order of detention passed by the DM was required to be reviewed within 15 days for confirmation or revocation, by the State Government. This placed a heavy responsibility on the State Government to see that detentions were not ordered on untenable or irrelevant grounds.

19.12 The number of cases in which the State Government did not confirm the order of detention passed by the detaining authority was : Goa nil out of 113 ; Tamil Nadu 1 out of 1,027 ; West Bengal 1 out of 311 ; Haryana 5 out of 200 ; Rajasthan 8 out of 542 ; Gujarat 188 out of 1,655 ; Maharashtra 98 out of 5,473 ; Orissa 44 out of 408. These illustrative figures are revealing of the manner in which MISA was administered. According to information furnished by the U.P. Government, out of 6,956 cases of detention under MISA, in no case did the State Government refuse to confirm the order of detention. However, a scrutiny of cases has revealed that in a few cases the State Government did refuse to confirm the orders of detention passed by the District Magistrates.

19.13 In some States like U.P., Orissa, Bihar, Andhra Pradesh, Gujarat and Karnataka, some scrutiny was undertaken by the Home Department before submitting the files for final orders. In U.P., the files of detention cases were routed through the State Law Department but almost invariably its advice regarding inadequacy or irrelevancy of the

grounds of detention given by the detaining authority, was ignored by the State Government and orders were confirmed on administrative grounds which remained undefined. In Orissa, Bihar, Karnataka, Andhra and Gujarat also, in most cases, the detentions were confirmed even when the inadequacy or irrelevancy of the grounds of detention was clearly pointed out by the Home Department. The scrutiny was treated as a meaningless formality. In effect, there was little difference between the States where scrutiny was undertaken at the State level and the States in which even this formality was dispensed with in continuing the detention of a person.

19.14 There were cases in practically every State of orders passed by the DMs/Police Commissioners that suffered from serious legal flaws. In many cases, the detaining authorities failed to send necessary documents such as their report under Section 3(3) of the MISA or even the grounds of detention, to the State Government as required by law. In some such cases, the orders were revoked by the State Government and in some other cases, the detaining authority was asked to revoke the detention orders.

19.15 The declaration under Section 16A(3) of the MISA made by an officer was required to be reviewed by the State Government within 15 days and it was clearly enacted that the declaration shall cease to have effect unless it is confirmed by the State Government, after such review within 15 days. Several cases have come to notice in which the District Magistrates failed to send their reports about the detention to the State Government within the period of 15 days. Such detentions became legally invalid on the expiry of the 15 days after the passing of the order of detention. But in some such cases the State Governments merely revoked the order of detention after the expiry of the statutory period of 15 days. The detenu continued under illegal detention from the date of expiry of the period of 15 days to the date of revocation of the detention order. In some cases, the detaining authority issued fresh detention orders to continue the detention of the detenu.

19.16 Scrutiny of the MISA cases of Assam revealed a unique feature relating to the declaration under Section 16A. In a few cases of detentions ordered by the District Magistrates under Section 16A, the State Government decided not to confirm the declaration but allowed the detention to continue, the operational effect being to convert a detention under Section 16A ordered for dealing effectively with emergency into a detention under the unamended provisions of MISA. Legality of such a course of action is open to question, for no detention ordered under Section 16A could remain valid after 15 days if the declaration made by the DM was not confirmed by the State Government.

19.17 In Himachal Pradesh, the detention orders purported to be issued by the District Magistrates to effectively deal with the emergency were not accompanied by declaration under Section 16A.

which were subsequently issued by the State Government while confirming the detention. The requirement of the MISA that the declaration under Section 16A was to be issued by the detaining authority simultaneously with the detention order was not, therefore, complied with in such cases.

19.18 The detentions ordered under MISA throughout the country during emergency may be broadly classified into four categories: (1) Members and associates of Opposition Political Parties; (2) Members and associates of banned organisations, viz., RSS, JEL, Anand Marg and CPML; (3) Criminals; (4) Anti-social elements and economic offenders. The ratio between political and non-political detentions varied from State to State. In States like U.P., Bihar, Gujarat, Goa and Delhi, the criminals and anti-socials detained under MISA far outnumbered those detained for alleged political activities. The position in Tamil Nadu, Karnataka, Kerala, Rajasthan, West Bengal, Himachal Pradesh, Haryana, Orissa and Andhra Pradesh was the reverse. In the States of Madhya Pradesh and Maharashtra where the number of detentions under MISA exceeded 5,000, the ratio of political and non-political detentions was roughly even. Out of approximately 35,000 persons detained under MISA throughout the country during the emergency, about 13,000 were those alleged to be connected with political parties including the banned organisations.

19.19 Soon after the declaration of Emergency, a large number of persons alleged to be members or sympathisers of the non-CPI Opposition Parties was detained. A large number of detenus in Madhya Pradesh, Gujarat, Karnataka, Rajasthan, Delhi, Maharashtra and, to some extent, in Bihar and U.P. were members of the Jan Sangh and its sympathisers. The Bhartiya Lok Dal Party members came in for special attention in Orissa, U.P. and Haryana. The Dravida Munetra Kazhagam was the subject of a concentrated onslaught in Tamil Nadu where more than 400 of its members were detained under the MISA out of a total number of 570 political detentions in that State.

19.20 Scrutiny of cases of detentions under the MISA has revealed that in a majority of the States, a large number of persons belonging to the political Opposition Parties were detained on the ground of alleged participation in one or two secret meetings in which imposition of emergency and Government policies were opposed or criticised. In a number of cases, the District Magistrates passed detention orders merely on a single report of the Superintendent of Police or even a lower functionary in the police department stating that the detenu took part in a secret meeting in somebody's house on a particular day or occasion and criticised the Prime Minister and the emergency. In some cases, in addition to this, the political activities of the detenu at a time far removed from the date of imposition of emergency were also set up. In most cases, they were not of a nature as could be termed violent or likely to disturb public order in any way. In many others, even these activities were also not revealed in the grounds.

19.21 Criticising the Government policies such as imposition of levy on foodgrains, food policy or educational policy and similar measures a long time before the declaration of Emergency were, in many cases, considered sufficient for ordering detentions under MISA. Likewise, criticism of the imposition of emergency and of the policies of the Prime Minister in secret meetings in someone's house or being critical of the Prime Minister or her policies a long time before 1975 or shouting of anti-emergency slogans was considered sufficient to attract the use of MISA against the person concerned. In a number of cases these grounds were invented to justify detention.

19.22 In Tamil Nadu, a large number of persons were detained simply by mentioning the general and vague ground that they belonged to or were associated with the Dravida Munetra Kazhagam Party and were rowdies, without mentioning a single incident or fact to denote any prejudicial activity on the part of the person detained. In other States also, many detentions of persons with political affiliations were ordered simply on the general ground that they belonged to a particular political party, and no incident or fact was mentioned in the grounds to justify the apprehension that the activities of the detenu were prejudicial to the security of the State or public order. In Maharashtra and Gujarat, a number of persons allegedly belonging to the Jan Sangh were detained in this manner. In the eastern States of West Bengal and Orissa though detentions u/s 16A were comparatively fewer, the members of the Communist Party of India (Marxist) were detained on such general grounds.

19.23 Practice of passing detention orders merely on the ground that the detenu belonged to a named banned party or organisation or was sympathetic towards the party or organisation, was followed extensively. In a large number of cases, the grounds given for detention merely alleged that the person concerned was a member or sympathiser of a named banned organisation without mentioning any specific activity on his part. In Delhi, Maharashtra and Gujarat and to a smaller extent in Madhya Pradesh and U.P., this practice was followed to detain number of alleged RSS workers and sympathisers, while in Bihar, Orissa and West Bengal, some alleged Anand Margis were detained on similar grounds. The fact that there may have been some record of activities in the past of such persons with the police, would not alter the impropriety of their detention because in these cases the subjective satisfaction of the detaining authority was only based on a general and vague report about the detenu being associated with the banned organisations, without disclosing any specific fact or activity which could be termed prejudicial. Even as the law then was, simply being a member of a banned organisation could not render a person in law liable to be detained under the MISA in the absence of any evidence of some prejudicial activity on his part. A mere apprehension about his indulging in prejudicial activities in future could not be reasonably entertained, in the absence of some instance of his past or present

conduct being disclosed in the grounds. Many such detentions were bad in law and disclosed a total lack of application of mind by the detaining authority and the State Government had confirmed such orders of detention.

19.24 The conclusion is inevitable that after the Government of India issued a notification banning certain organisations, viz., RSS, JEI, Anand Marg, CPML and others, most of the State Governments acted almost in a frenzy, detaining persons on the slightest suspicion of association with these organisations even though, in many cases, no reasonable grounds were available to detain them. In this they were being repeatedly goaded by the Government of India, who continued to give directives to the States, to launch a vigorous drive against these organisations on all fronts.

19.25 The number of criminals and anti-socials detained under MISA was proportionately quite large in U.P., Maharashtra, Madhya Pradesh, Gujarat, Bihar and Delhi and the scrutiny of cases in these States in particular and other States in general has revealed a pattern of large scale indiscriminate and unjustifiable use of MISA in respect of persons falling in this category which will be illustrated by the following facts :—

- (i) Persons were detained under MISA for alleged criminal activities relating to more than five years before the detention and in several cases the alleged offences mentioned in the grounds pertained to an even remoter period dating back up to 15 or 20 years. Such detentions were ordered on a larger scale in Gujarat, U.P., Bihar and Maharashtra.
- (ii) In a large number of cases, the grounds set up for detention only revealed the registration of an offence or putting up a charge sheet in the court but no previous convictions could be shown. In many cases, the detenu was shown as having been acquitted by the court in respect of several offences, yet these were made the grounds for detaining him under the MISA. Mere involvement in offences, even though he had been acquitted by the courts, in a large majority of cases was considered sufficient for the use of MISA.
- (iii) All kinds of petty criminals, those involved in offences under the Excise Act, Prohibition Act, Gambling Act, Indian Arms Act, Section 34 Police Act and minor offences like ordinary theft, assault, "eve-teasing", criminal trespass, etc., were detained under MISA for long periods in States like Madhya Pradesh, U.P., Bihar, Gujarat, Maharashtra, Delhi, Andhra Pradesh as well as, to a lesser extent, in other States.
- (iv) Even persons involved in a single offence albeit a serious one like murder or dacoity, against whom criminal cases were already

pending in courts were detained under MISA. In some cases, detention orders were passed against persons already in jail awaiting trial for other offences or serving jail sentences.

- (v) In Maharashtra, Gujarat and Tamil Nadu, persons alleged to have been involved in "bottlegging" activities were detained in large numbers even if hardly any previous conviction could be cited in the grounds. In many cases, the grounds only contained a general allegation about the detenu being a habitual liquor seller operating through agents but no previous involvement in any criminal offence was mentioned. *Matka* gamblers came for special attention in Maharashtra and Goa but here again the grounds given were too vague and inadequate to constitute any threat to the security of the State or Public Order.
- (vi) By D.O. letter No. 11-16(E)-034/1/75-S&P(D.I), dated March 18, 1976, the Ministry of Home Affairs directed the State Governments to use MISA against habitual criminals concerning railway property. It was stated in this D.O. letter that isolated cases of crime would not make out a case for detention under MISA and only repeated conduct of a particular type which affects either public order or maintenance of essential services can constitute a valid ground for action under MISA. But in pursuance of this directive in many States not only habitual criminals but persons involved in one or two minor offences concerning railway property were detained. Instances of this type were quite common in U.P., Maharashtra and Gujarat in particular. There were cases where even a single incident of theft was considered sufficient to attract the use of MISA.
- (vii) MISA was used as a weapon against all kinds of activities, not even remotely connected with the security of State, public order or maintenance of essential supplies. Government servants accused of corruption or misbehaviour, petty traders violating licensing conditions, persons involved in land disputes, contractors supplying inferior material for construction works, those contesting Government decisions in a civil court, those selling milk and other commodities at inflated prices, workers in factories pressing their demands or criticising the management, persons accused (not convicted) of committing irregularities or defalcation in cooperative societies and banks, those not cooperating in family planning programme of the Government or refusing to get themselves sterilised—all came within the all-pervading sweep of the MISA. Particularly in U.P., MISA was used extensively against those alleged to be opposed to family planning or not actively cooperating with the programme of family

planning. Thus, MISA was used for purposes totally beyond the purview of Section 3(1) of the Act.

19.26 Use of MISA against hardened criminals involved in serious offences affecting public order or supply of essential commodities could probably be justified in certain cases but the use of this extraordinary power of detention against petty offenders or persons who were not shown to have indulged in any criminal activity for the past four or five years or so, or those who could have been effectively dealt with under the normal laws cannot but be regarded as unwarranted and unjustified. It appears that the Police in most of the States considered the amended MISA as an easy way out in dealing with the persons against whom they could not secure convictions under the normal laws.

19.27 When the Government of India became aware of the indiscriminate use of MISA against petty offenders, in a wireless message No. 13512/JS(IS)/75, dated September 10, 1975, sent to all State Governments, the Ministry of Home Affairs said—

“Government have in the past noticed some instances in certain States that persons accused or suspected of offences like thefts or receiving stolen property or cheating or dealing in illicit liquor, etc., which do not impinge the security of State or public order, have been detained under MISA. Such detentions will not be proper within the existing framework of MISA... unless person's activities fall within the purview of sub-Section (1) of Section 3 of MISA, a valid detention order cannot be made. This position should be correctly understood and carefully implemented by all authorities concerned.”

But these directions of the Government of India were not heeded to by a majority of the State Governments and detentions of such petty offenders continued to be made even after receiving these instructions particularly in U.P., Maharashtra, Gujarat, Tamil Nadu and Madhya Pradesh and to a lesser extent in other States also.

19.28 After the imposition of emergency, a number of students were detained all over the country. They can be classified into two categories :

- (i) Those who were detained due to alleged involvement with the Opposition political parties like Bhartiya Jan Sangh or the banned organisations, particularly the RSS.
- (ii) Those who took a leading part in agitations in educational institutions during the previous years and were student leaders even though they did not indulge in any political activity or were not associated with any political activity.

Many students were detained on flimsy grounds like creating disturbance in the examination hall, misbehaviour with the Principal or taking a delegation to the college authorities for pressing students' demands. Action under MISA was taken against them in addition to expulsion from educational institutions and hostels, etc. MISA was used extensively against those students who had taken part in student agitations in the years prior to 1975. Many students were detained for having taken part in Nav Nirman Agitation in Gujarat and JP Movement in Orissa and Bihar, in the year 1974 and in many cases, no recent agitational activity was mentioned in the grounds of detention. [Cases of Shri Rejeev Kumar Dubey student of District Raipur (MP), Shri Vijay Kumar Patil, District Ujjain (MP), Shri Aditya Narain, District Ujjain (MP) and Shri Prakash Preshtala, District Rajkot (Gujarat)].

19.29 MISA was also used in a majority of the States to curb trade union activities. Several workers working in factories and trade union leaders were detained on the ground that in the past they had participated in agitations against the management. There were cases when even a single incident of pressing the authorities for meeting the demands of workers was made the basis of a detention order. In many cases, no concrete facts showing any prejudicial activity were mentioned in the grounds and only vague references were made about the person concerned, secretly inciting the workers to agitate for their demands. Such cases were found in U.P., Madhya Pradesh, Gujarat, Orissa and West Bengal in particular. [Cases of Shri Vasudev Shankar Lal Joshi and Shri Guntant Motilal Swami, both of District Ahmedabad (Gujarat), Shri Nani Gopal Biswas of Calcutta, Shri Kamal Mitra of 24-Parganas and Shri Subhash Kumar Banerjee of 24-Parganas (West Bengal), Shri Bala Prasad Sharma of District Jabalpur and Shri J. P. Pandey, Secretary of All-India Postal Employees Union, Jabalpur (MP)].

19.30 Another disturbing feature of the use of MISA during the emergency was that in some cases detentions were ordered by the detaining authority at the behest of some other person or authority. Thus the mandatory requirement of the subjective satisfaction of the detaining authority in respect of the necessity to detain a certain person was violated. Even though such orders of detentions stood legally vitiated *ab initio*, yet victims of such serious illegality continued to languish in jails for long periods.

19.31 Even though the subjective satisfaction of the detaining authority is the main requirement under the provisions of MISA, the following two basic concepts are necessary to be fulfilled—(i) the subjective satisfaction must be of the detaining authority itself and of no one else; (ii) such satisfaction must be real and *bona fide*. The Supreme Court in the case of Shri Khudi Ram Dass Vs. State of West Bengal (AIR 1975 SC 550), has given a number of instances when the so-called subjective satisfaction of the detaining authority stands vitiated. They are :—

- “(i) Where the authority has not applied its mind at all.

- (ii) Where the power is exercised dishonestly or for an improper purpose, i.e., purpose not contemplated by the Statute or where the order is passed *mala fide*.
- (iii) Where the satisfaction is not the satisfaction of the authority itself.
- (iv) Where the satisfaction is based upon the application of a wrong test on misconstruction of a statute.
- (v) Where the satisfaction is granted on materials which are not of rationally probative value, materials which are not relevant to the subject matter of the enquiry or extraneous to the scope and purpose of the statute, where the satisfaction is arbitrary, vague and fanciful."

19.32 In another case of Shri Jagannath Biswas Vs. State of West Bengal (Writ Petition No. 24 of 1974), the Supreme Court had held that the long gap between the occurrence and the order of detention would be fatal to the subjective satisfaction of the detaining authority. When the detention orders passed during the emergency all over the country are tested in the light of pronouncements of the highest judicial Tribunal, the Commission finds many of the detention orders *prima facie* bad in law and motivated by considerations divorced from those that were in the minds of the framers of the original MISA.

19.33 It is also striking that even after these flaws were pointed out by the Home Department or Law Department in several States like U.P., Bihar, Orissa, Gujarat, they were persistently ignored. It is an inevitable conclusion that these illegal detentions were deliberately made by the Governments of the day apparently following the cynical approach that it did not matter if nine innocent persons languished in jail so long as one whose detention was politically desirable did not escape.

19.34 Examination of instructions and messages issued from time to time by the Government of India during the period of emergency reveals that the emphasis was on a vigorous drive to silence all opposition and crush the banned organisations in particular in the name of maintenance of law and order at all costs and preventing any form of opposition to Government policies and actions. However, the Prime Minister addressed a D.O. letter No. 179-PMO/75, dated July 3, 1975, to all Chief Ministers stating—

"As you know, we have recently amended the Maintenance of Internal Security Act by an Ordinance. This amendment gives wide powers to the State Governments to detain persons without giving them any grounds for their detention. Their cases need not even be sent to Advisory Boards.

I am sure you will agree that this power ought to be exercised very sparingly and with the greatest of care. The provision in the amending Ordinance is that if the

detention is made by orders of any officer it has to be approved by the State Government within a fortnight of the detention. There are also provisions for periodical reconsideration of the detention orders.

Having regard to the nature of the powers granted, it is essential that the highest authority in the State should approve the detentions. I would, therefore, request you to personally look into all cases that come under this amending Ordinance and all detentions thereunder should only be made if they are approved by you or, if necessary, by a Ministerial Committee appointed by you.

Similarly, the periodical reconsideration of the detentions should also be by such a high-powered authority. Let it not be said that this amending Ordinance is in any way being misused or misapplied. It is of the essence that the powers under this amendment should be used only to the extent necessary to meet the situation arising out of the emergency."

Later, the Home Secretary, Government of India also sent a D.O. letter No. 11/16011/81/75-S&P (D.II), dated October 10, 1975, to all State Governments wherein he referred to the earlier communication by the Prime Minister and mentioned—

"Different enforcement agencies which are responsible for enforcing emergency matters have been armed with numerous powers. In the exercise of these powers there is obvious scope for harassment of innocent persons and law abiding citizens, either as a result of over-enthusiasm on the part of the enforcement officer or on account of corrupt considerations involving blackmail, extortions, etc. The Prime Minister has already written to your Chief Minister *vide* her letter No. 179-PMO/75, dated July 3, 1975, about the need to exercise care in resorting to detentions under the amended provisions of the MISA. . . . adequate steps should be taken to minimise the scope for such malpractices and to provide satisfactory mechanism for prompt redressal of public grievances as well as award of deterrent punishment to those found guilty of abusing their official authority."

19.35 The Prime Minister again wrote to the State Chief Ministers on July 31, 1976, mentioning that reports of harassment by the police, unimaginative handling of situations, cases of wrongful arrests continue to come to her notice. She suggested that the Chief Ministers should take personal interest in the matter. From this it is clear that the Prime Minister and the Government of India were fully aware all the time that powers under the MISA were being misused in the States on a considerably large scale.

19.36 It may be recalled here that during the Parliamentary debate on MISA Bill in 1971, the

Minister in the Ministry of Home Affairs, Shri K. C. Pant had given this categorical assurance in the Lok Sabha on June 17, 1971 : "As there is a provision that the State Government should report facts to the Central Government in respect of orders made and approved by them, we would exercise the vigilance that it is not misused". When during emergency each case of detention under MISA was being reported to them and thousands of citizens were being thrown into jail by indiscriminate and arbitrary use of the MISA, no evidence of this promised vigilance by the Central Government was forthcoming save these few communications to State Governments which remained as ineffectual as the "Papal bull against the Comet".

19.37 Similarly, many State Governments like West Bengal, Karnataka, Bihar, Andhra, Gujarat, Himachal Pradesh, did issue instructions to their subordinate officers to exercise care in the use of MISA and make proper scrutiny of the material before detaining any person. But the scrutiny of cases in these States as well (with the exception of Himachal Pradesh) has shown that these instructions remained only on paper and detentions continued to be made on no grounds or inadequate or irrelevant grounds and were confirmed by the State Governments themselves in violation of their own instructions on the subject and the advice of Government of India.

19.38 It is difficult to accept that in the atmosphere then prevailing in the country, any State Government would have dared to ignore or bypass the advice or instructions of the Prime Minister or the Government of India unless they felt assured that they would not be taken to task for this lapse. Instructions for stricter enforcement of emergency were taken far more seriously and at times acted upon with an urgency almost bordering on frenzy than the advice to use MISA 'sparingly and with care'.

19.39 Under Section 16A(iv) of the MISA all the cases of detention were required to be reviewed every four months by the State Government, but in most cases the State Government performed this duty in the same mechanical manner which they had exhibited in confirming the orders of the detention passed by the District authorities. Usually at the time of review, a report regarding the desirability of release or otherwise of the detenu, was called for from the District authorities and in some States from the Divisional Commissioner also. But it was seen that mostly the District authorities, in their anxiety to play safe, fought shy of recommending release of persons and State Governments also generally did not display any liberal attitude towards the release of detenus. The Government of India further tightened the procedure by advising the State Governments to obtain their prior approval before ordering the release of any detenu. The Home Secretary, Government of India, *vide* his D.O. letter No. 11/116011/75/S&P (D.II), dated January 3, 1976, suggested to all the State Governments to obtain the advice of the Central Government before releasing a MISA detenu. In the same D.O. letter he did mention, "It is true that

this procedure is not a legal requirement but the matter has to be viewed in the overall context of the emergency". Though this was only an advice but in practice it had the effect of an order and State Governments started following the practice of referring all cases of release of MISA detenus to the Central Government from January 1976 onwards. Moreover, making a reference to the Ministry of Home Affairs resulted in inordinate delay in the release of detenus. There were cases in which the Central Government did not agree to release detenus even though the State Government felt that their detentions were no longer necessary. By these directives, the Central Government in an executive manner, restricted the legal right of the State Governments to revoke the orders of detentions passed under MISA.

19.40 The Commission has examined in a general way the detentions under the MISA ordered by the detaining authorities under the respective State Governments. Notes containing a factual account of these detentions in each of the States have been prepared and are reproduced below. This exercise which was undertaken by the Commission through the officials, is intended primarily to compile and set down at one place on the basis of the records of the respective State Governments, a factual account of the detentions ordered during the emergency by the different State Governments as a record of the times. The Commission has generally refrained from making any observations against any individual functionary of the State Governments since it has not been possible for the Commission to give an opportunity to the official concerned to explain his point of view before the Commission. Even so, the facts set down, based as they are on the records of the Government, are eloquent enough to point out how unthinkingly and callously were some of the detentions ordered at different levels without the slightest regard for the liberty of an individual.

ANDHRA PRADESH

19.41 The total number of detentions ordered under the MISA and other Preventive Laws in this State was as follows :

MISA	..	1,135
COFEPOSA	..	45
DISIR	..	451

81 out of 1,135 detentions were ordered under the unamended provisions of MISA, and the total number of detentions ordered by invoking Section 16A of the MISA was 1,054. The categorywise break-up of 1,135 detentions under MISA is as follows :—

Political Parties	...	210
Banned Organisations	...	512
Anti-socials, criminals and others	...	413

Among those detained on account of association with the political Opposition parties, the largest number

(130) was of the followers and associates of the BJS. Members and associates of the CPML (350) topped the list amongst those detained on account of association with the banned organisations.

19.42 The detention cases received from the District authorities were processed in the General Administration Department and put up to the Chief Minister through the Chief Secretary for final orders. The detaining authorities sent the grounds of detention in a majority of cases in the form of a letter addressed to the Chief Secretary. However, in some cases, copies of reports received from the SP were attached.

19.43 It was seen that some scrutiny of grounds of detention was done in the GAD. In majority of cases, the GAD recommended confirmation of the declaration issued by the detaining authority under Section 16A(3). In 111 cases, the declarations issued by the detaining authority were not confirmed by the State Government. There were a few cases in which the declaration under Section 16A(3) were confirmed by the State Government even though the GAD pointed out that the grounds of detention were not proper or sufficient. In the cases of Shri M. Ram Mohan Rao, an Advocate of Laxempet, the grounds read :—

"He had been instrumental in inciting a good deal of litigation and making use of his influence for political ends. He has been acting as an active liaison between the leadership of the extremists and local youngmen of Laxempet, Thimapuram and other villages. He was instrumental in inducing the party workers to settle down in Thimapuram village and inducing people to indulge in violence."

The GAD noted in this case :—

"There are no specific instances quoted in the grounds, but for the recent murders in Laxempet Taluqa, District Adilabad, they do not appear to give any justification for confirmation. We may, therefore, allow the order to lapse and advise the Collector accordingly."

However, the Chief Secretary recommended confirmation of the detention saying :—

"While generally agreeing with the J. S. nevertheless, I would recommend confirmation in view of the recent occurrences in Adilabad District. Collector will be asked to give full particulars of the instances wherever possible in the grounds of detention."

The detenuon was confirmed and the Advocate remained in detention till March 21, 1977.

19.44 The grounds of detention in case of persons detained on account of their association with political Opposition party revealed their past activities over

a period for five years or more, such as participating in meetings and demonstrations, etc., organised by the detenu's party. In many cases, no recent activities nearabout or shortly after the proclamation of emergency were mentioned (case of Shri N. Syanna of District Mehboob Nagar). In the case of Shri Kanna Reddy of District Kurnool, the ground of detention mentioned in detail the past political activities of the detenu such as organising meetings and agitations but they mostly pertained to the year 1973 only. Last activity mentioned was of participating in a public meeting on January 5, 1975. Shri J. Bhaskar Rao of District Kurnool was detained on July 31, 1975. The main ground of detention was that he published a derogatory article against the Prime Minister. The grounds did not reveal any other activity that could be regarded as prejudicial.

19.45 Persons alleged to be members or sympathisers of the banned organisations were detained without any specific activity being mentioned in the grounds of detention. The grounds of detention given in many cases of CPML members and sympathisers only mentioned that they were active members of the organisation and had participated in the meetings of the party in the previous years or had tried to collect funds to strengthen the organisation in the past. The grounds of detention given in the case of Shri Kodam Rajaiah of District Karim Nagar read :—

"Whereas it has been made out to me that you Shri Kodam Rajaiah son of Ramaiah resident of Thangallapalli of Sircilla Taluq, are the Secretary of the Ryothu Cooli Sangham, Sircilla, you have organised and subsequently brought into the existence the Sircilla Unit of Ryothu Cooli Sangham on 13-11-1974, you are also responsible for the promotion of this organisation and enrolment of its membership. Active participation, membership and the management of the above State Organisation brings you under the purview of Rule 33(3) of the Defence of India Rules, 1971 and your remaining at large is prejudicial to the maintenance of public order and security of the State."

19.46 The grounds given in the case of Shri Suvarnakanthi Vijaya Raju of District Krishna detained on June 29, 1975, were :—

"He is an active worker of the RSU [pro-CP(ML) Charu Mazumdar Group] believing in 'Armed Revolution'. He was elected an executive member of the AP RSU in the First State Conference of the AP RSU held at Hyderabad on 22nd and 23rd February 1975.

His present activities have been directed for promoting and propagating disloyalty and disaffection towards the Government among the members of the public and he is thereby conducting himself in a manner prejudicial to the maintenance of public order."

19.47 77 students were detained under MISA during the period of emergency. A majority of them was detained on account of alleged association with the CPML and its connected organisations. In many cases, the activities mentioned in the grounds of detention related only to their participation in pro-CPML agitations in the past with no recent activity mentioned. Some students were detained on account of alleged participation in the meeting and agitations connected with the JP movement. In the case of Shri Randla Sadashiv Reddy, detained on July 17, 1976, the grounds of detention mentioned that he was an active member and organiser of "Radical Students' Union" and he attended the State Conference of the union in February 1975. His active participation, membership and management of the above organisation brought him under the purview of Rule 33(3) of the DISIR. During the last one year of emergency, he had been holding secret meetings and exhorting students to be ready for armed struggle but no date time and place of the alleged meetings was mentioned in the grounds.

19.48 112 Government servants were also detained under MISA. A large number of these Government servants belonged to public undertakings like Hindustan Machine Tools Ltd., Indian Drugs & Pharmaceuticals Ltd., etc. They were detained on the grounds of being active members or office-bearers of employees' associations affiliated to CPM or CPML. In many cases, employees agitating on the bonus issue were detained under MISA. Shri Poorna Chandra Rao, President of Hindustan Machine Tools Ltd. Workers' Union, Shri G. Ramakoteswara Rao and Shri K. Panduranga Rao of the same undertaking were detained on the grounds that in October 1975, they had agitated for the demand of getting 20 per cent bonus, opposed the Government policy on bonus and distributed pamphlets among workers. A few State Government employees were also detained under the MISA on the ground of alleged association with the JP movement. Shri R. B. Mooli, a Clerk in the Directorate of Medical & Health Services was detained on the ground that he was Chairman of All India Religious Delegates' Convention and President of Telengana Employees' Association. In April 1975, he addressed public meetings in which he spoke against the Government as well as wounded the feelings of other communities. No activity after April 1975 was mentioned.

19.49 In some cases of detention of criminals and others, it was seen that MISA was used for purposes not covered by Section 3(1) of the Act. Allegations like misappropriation of Government funds, default in payment of excise arrears, money-lending, misuse of fertilisers by stockists, gambling, bootlegging and black marketing in cinema tickets, formed the grounds of detention in many cases. In some of detention cases, the grounds referred to criminal activities in the remote past with no activity within two or three years.

19.50 Shri B. Sajanlal was detained on January 18, 1975 by Police Commissioner, Hyderabad on grounds of indulging in illicit distillation of liquor but the activities of the detenu mentioned in the

grounds of detention pertained to the year 1973 only. Shri Sham Lal Shama was detained on August 25, 1975, under order of the Police Commissioner, Hyderabad on account of indulging in gambling. The grounds did not mention any specific activity after the year 1972. Mohd. Ghouse of Hyderabad was detained on August 1, 1975, on account of past criminal activities. But no activity after the year 1974 was mentioned in the grounds of detention.

19.51 Shri Y. Venketakrishnoji Rao of District East Godavri, was detained on June 24, 1976 on the ground of being a receiver of stolen railway property. Two incidents, one of April 1, 1975, concerning 35 iron pipes and another of January 29, 1976, concerning 90 new empty gunny bags were cited in the grounds. The General Administration Department noted :—

"A fit case for ordinary MISA. We may ask the Collector to invoke the ordinary provisions of MISA and allow this to lapse."

The Chief Secretary noted :—

"While ordinarily, I would have agreed with the J.S., in view, however, of the large scale thefts that are going on, as a deterrent step, it would be advisable to confirm the order."

The detention was confirmed.

19.52 No Review Committee for periodical review of detention cases was set up in the State. However, four-monthly review was done regularly by the State Government. All cases were put up before the Chief Minister for final orders after obtaining reports from the detaining authority and DIG (Intelligence). It was seen that in almost all cases, the information given by the DIG (Int) was accepted and detentions were continued or revoked mainly on the basis of the report of the DIG (Int) and detaining authority. However, in October 1975, some political detenus recommended for release by the DIG (Int) were not released in view of the forthcoming visit of the Prime Minister. There were several cases in which the State Government recommended revocation of the detention order, but the Central Government did not agree to the release of the detenu.

19.53 All applications for parole were put up to the Chief Minister for final orders. Before taking a decision on the request for parole, the comments of the detaining authority and DIG (Int) were obtained. It was seen that in most cases, the decision to grant or refuse parole was taken on the basis of the report of DIG (Int). Mostly parole was granted on the death or marriage of a near relation, sickness of the detenu or his near relations, etc.

19.54 The State Government in reply to the Commission's questionnaire have stated that parole was refused even in the following cases :—

- | | | |
|--|-----|----|
| (i) On account of death of a family member | ... | 13 |
| (ii) Marriage of detenu's dependant | ... | 12 |
| (iii) Illness of a family member | ... | 58 |

19.55 Dr. P. V. N. Raju, President of the State BJS, was earlier granted 10 days' parole for attending the marriage of his daughter in January 1976; but in August 1976 when he requested for parole on the ground of illness of his sister, the request was rejected for the reason that his sister was not seriously ill.

19.56 Shri K. P. Shanthi Raju requested for parole in December 1976 on the ground of illness of his daughter. It was rejected because DIG(Int) was opposed to the release of the detenu. Later a telegraphic request for parole was made by the detenu on account of the death of his father. DIG(Int) confirmed the fact of the death of detenu's father on December 29, 1976, but opposed granting of parole on the ground that the detenu was a militant CPML worker. Parole was refused but permission to attend the obsequial ceremonies under police escort was granted.

19.57 Shri U. Balyoggaya, detained on November 6, 1975, on the ground of being associated with the militant group of CPML, made a request for parole stating that his wife is bed-ridden with TB, his grandmother is very old and infirm and his younger brother is a cripple having lost his legs in an accident. The Collector, Mehboob Nagar confirmed these facts but opposed the request for parole on the ground that the detenu was a hardcore naxalite and was likely to revive his activities, if released. The request was rejected.

19.58 Shri Yedula Venkaiah of Nellore District made a request for parole on December 8, 1975, on the ground that his mother had expired on November 28, 1975, and he was her only son. The Collector recommended one month's parole while the DIG(Int) agreed to one week's parole under police escort. But the Chief Secretary noted on December 24, 1975:—

"The detenu is reported to be a militant cadre of CPI(ML). I would not even recommend sending him under escort as it would be possible for him to communicate with others. This may be undesirable on the eve of PM's visit."

The Chief Minister agreed with the opinion of the Chief Secretary and request for parole was rejected.

19.59 Shri G. S. Prabakar Sarma, a Junior College Lecturer of Vishakhapatnam, was detained on account of involvement in the activities of the RSS. On February 20, 1976, he sent a telegram to the State Government requesting for parole on account of the death of his father. The same day, telegrams were also sent by the wife and the brother of the detenu requesting for his release on parole. The comments of Collector, Vishakhapatnam and DIG(Int) were called for on February 21, 1976, but the Collector reported inability to give any comments because the death had occurred in a village of Krishna District. The report of the Collec-

tor, Krishna District was received on February 27, 1976, in which he confirmed the fact of the death of detenu's father and also informed that the obsequies will start on February 28, 1976. However, the case was put up for decision by the GAD on March 1, 1976, and a decision to grant parole was taken on March 4, with the result that the detenu could not attend the last rites of his father.

ASSAM

19.60 533 persons were deained under MISA in Assam during the period of the emergency. Categorywise break-up is given below :—

- | | |
|-----------------------------|----------------------|
| (i) Members or Asso- 143 | including 74 of RSS |
| ciates of banned 28 | of CPML, 13 of |
| Organisations | AM and 4 of JEL. |
| (ii) Members or Asso- 203 | including 86 of CPM, |
| ciates of Political Par- 33 | of Socialist Party |
| ties | and 20 of BJS. |
| (iii) Others 187 | |

The third category comprises anti-social elements and includes railway criminals, burglars and thieves, illicit distillers, opium and ganja smugglers and hoarders/profiteers of essential commodities.

19.61 RSS among the banned organisations and CPM among the political parties appear to have faced the brunt of MISA in Assam.

19.62 It has been intimated by the State Government in reply to the Commission's questionnaire on "Circumstances leading to Emergency and Arrests/ Detentions" that after the receipt of the information and instructions from the Government of India regarding enforcement of emergency, names of some persons belonging to SPI, BJS, RSS, CPM were suggested to the District SPs from Special Branch Headquarters for arrests under DIR/detentions under MISA. Wireless message No. SP II/249-75/221, dated June 26, 1975, from DIG, Special Branch, Gauhati, to all District Superintendents of Police with information to the DIGs is reproduced below :—

"IN THE CONTEXT OF DECLARATION OF EMERGENCY AND INTENTION OF OPPOSITION PARTIES TO DISTURB PUBLIC ORDER AND DISTURB SERVICES ESSENTIAL TO COMMUNITY () DETENTION ORDERS UNDER MISA SHOULD BE OBTAINED IN RESPECT OF ACTIVE LEADERS/WORKERS OF SOCIALIST PARTY, JAN SANGH, CPM () LISTS BEING INTIMATED SEPARATELY AND NAMES MAY BE ADDED OR THOSE INACTIVE MAY BE DELETED () THEIR ACTIVITIES AND MOVEMENTS BE KEPT UNDER WATCH FORTHWITH () PARA () DATE AND TIME WHEN THESE

DETENTIONS/ARRESTS SHOULD BE EFFECTED WOULD BE INTIMATED THIS EVENING (.) ALERT ALL CONCERNED AND KEEP DEPCOM INFORMED (.)"

19.63 As intimated by the State Government, 35 persons were detained under MISA and 22 were arrested under DLR during the period from June 26 to June 30, 1975.

19.64 Powers under MISA were used extensively to deal with trade union leaders, teachers and students. 20 persons were detained allegedly on account of their trade union activities. Railways and P & T Departments figure more prominently in this category of detentions. A large number of teachers were detained under MISA for their alleged association with Assam College Teachers' Association, whose activities find prominent mention in the grounds of detention of these persons. Powers under MISA were used to deal with agitating students and to restore peace on the campus. A large number of students were detained under MISA for their participation in student agitations over issues like enhancement in fee, postponement or boycott of examinations, etc.

19.65 Some examples of detentions ordered on political grounds are given below :—

- (i) S/Shri Kamla Das, Harulara Das, Harnath Das and Naryan Bharali, all of Congress (O), were detained under MISA under the orders of the State Government issued on September 18, 1975. Their detention was recommended by the SP, Special Branch on the ground that they were criticising the promulgation of emergency and 20-point economic programme of the then PM. It was also mentioned that they did not return the Government loan and were instigating the members of Panbari Agricultural Farm Corporation also not to repay the Government loans. Reference was also made to their presence in a meeting organised by Shri Nagen Barua, PSP MLA of Dergaon, who was allegedly supporting JP Movement. Detention orders were issued without invoking Section 16A. The cases were reviewed by the Advisory Board on October 28, 1975. The Board observed that the grounds of detention of these persons were mere duplication. The Board held that the main ground that they did not repay the loan granted to them, could not, even if found true, attract the provisions of MISA. Their attendance in the meeting organised by Shri Nagen Barua was not considered a sufficient ground in view of the fact that these persons appeared to be passive participants in a meeting whose organiser Shri Nagen Barua himself was not detained under MISA. Detention orders were revoked on November 7, 1975, on the advice of the Board.

- (ii) Shri Hem Chander Das was the lone CPI leader detained under MISA. He was detained on November 12, 1976, under the orders of the DM, Dibrugarh. The grounds of detention referred to his activities from 1952 to 1966 on the farmers' front. It was also mentioned that he was responsible for a clash between two factions in Dhanukhana Gaon in March, 1976, which had resulted in the death of one person. The exact role of Shri Das in this clash of March, 1976, was not spelt out in the grounds of detention, which were also silent about the immediate cause for his detention in November, 1976. Shri Hem Chander Das remained under detention till February 15, 1977.

- (iii) Shri Mohd. Ali, an Advocate of Kamrup, was detained under the orders of District Magistrate, Kamrup, dated July 9, 1975, under the normal provisions of MISA. It was mentioned in the grounds of detention that he had organised a Janata Convention at Barpeta Phukan Hall on June 8, 1975, and had acted as the treasurer of the Reception Committee. This Convention formed a Janata Sangram Parishad for Assam with 55 members including Shri Mohd. Ali with the object of launching a Bihar type movement in Assam. It was also mentioned in the grounds of detention that he had discussed with his associates on June 30, 1975, at his house the Allahabad High Court judgment setting aside the election of Smt. Indira Gandhi and decided to launch a violent agitation. The case was reviewed by the Advisory Board on September 6, 1975. Shri Mohd. Ali appeared before the Board and submitted that his father's name was Haji Mohd. Jasmal Ali Talukdar and not Abdul Motin Talukdar as was mentioned in the detention order. He also pointed out a discrepancy about his village. The Board observed : "This shows that he was not known to the authorities concerned before the alleged incident." The Board held that there was no sufficient cause for his detention and the order was revoked on September 9, 1975.

- (iv) Shri Hari Nath son of Shri Pushp Nath, General Secretary of All Assam Ministerial Officers' Association, Gauhati Branch, was detained under the orders, dated July 1, 1975, of District Magistrate, Kamrup, issued under the normal provisions of MISA. The case was reviewed by the Advisory Board on September 5, 1975. Shri Hari Nath could convince the Board that his detention order was originally issued on June 26, 1975, and the date of that order was later changed to July 1, 1975, after adding in the grounds of detention that he had gone to the University Hostel on July 1, 1975, to meet some stu-

dent leaders for organising an agitation to compel the authorities to hold the Post Graduate examinations afresh. The Board observed that the order of detention was prepared before this ground of detention came into existence. The order was, therefore, revoked on September 9, 1975. File shows that Shri Hari Nath was then arrested under DISIR on September 10, 1975. He was released on bail in this case on September 17, 1975. He was detained under MISA again on September 18, 1975. Grounds of detention referred to a secret meeting of July 5, 1975, and another of July 23, 1975, where he was alleged to have criticised the Government for imposing emergency and the authorities of the Gauhati University for refusing to hold Post Graduate examinations afresh. This detention was reviewed by the Advisory Board on November 15, 1975, and was found to be without sufficient cause. Detention order was, therefore, revoked on November 17, 1975.

- (v) Shri Apurva Kumar Chaudhary son of late Shri Krishan Kumar Chaudhary was detained on July 27, 1975, under the orders of District Magistrate, Kamrup. It was mentioned in the grounds of detention that he had discussed with his associates on July 13, 1975, the decision of the Executive Council of the Gauhati University taken on July 21, 1975, not to hold the Pre-University examinations afresh. He represented against his detention. The case was reviewed by the Advisory Board on August 29, 1975. The Board remarked that "this is absurd. The District Magistrate signed passed the order without applying his mind". The order was revoked on September 2, 1975. Another person Shri Kamal Kumar Das was also detained under the orders of District Magistrate, Kamrup, passed on the same grounds. In this case also, the Advisory Board observed on September 5, 1975, that "Obviously the allegation is absurd." His detention was revoked on September 9, 1975.

- (vi) 13 students of Assam Engineering Institute, Gauhati, were detained under the orders of District Magistrate, Kamrup, passed on June 30, 1976. Grounds of detention referred to a single incident of June 19, 1976. It is seen from the file that some students were expelled from the examination hall on June 18/19, 1976 for using unfair means. These students were alleged to have gone in a group to the residence of the Principal on June 19, 1976 and caused damage to his property after staging a demonstration there. It is not clear from the grounds of detention as to what action under the normal law was taken. Recourse to MISA appears to have been taken on

recommendations from the Special Branch. Shri Bhagwan Das son of Shri Kabin Das, was one of the detenus in this case. It is seen from the file that the State Special Branch wrote to the Political Department on July 8, 1976, to the effect that their further enquiries revealed that Shri Bhagwan Das had not taken active part in the student trouble on June 19, 1976, and he had given an undertaking for maintaining good behaviour in future. Shri S. K. Purkayastha, the then Joint Secretary (Political) recorded that "Special Branch would have done well to recheck their information before sending for detention of the said Bhagwan Das under MISA." The Chief Secretary added, "I feel orders should be revoked. Special Branch should be more careful in such cases, particularly, where young students are involved, whose career may be marred." Detention of Shri Bhagwan Das was revoked on July 26, 1976. Other detenus in this case were released on December 10, 1976.

- (vii) Shri Baseswar Saikia son of Shri Tola Ram Saikia, General Secretary of Assam College Teachers' Association, was detained under the orders of District Magistrate Naogaon, dated November 5, 1976. It was mentioned in the grounds of detention that Shri Saikia had taken active part in the movements launched by the Association in 1974 and during the time of Pre-University examination in 1975. On June 15, 1975, most of the college teachers from different colleges of Assam assembled at Naogaon College and expressed their lack of faith in Shri Saikia and resigned from the Association and joined the newly formed All Assam College Teachers' Association (AACTA). It was alleged that this had infuriated Shri Saikia, who was trying to foment trouble amongst the College Teachers by issuing some circulars in connection with the proposed 27th Annual Convention of ACTA to be held at Gauhati on November 16, 1976. In these circulars, he criticised the University authorities for cancelling the election of the Teacher Member to the Academic Council and also called upon all College Teachers to strengthen the Assam College Teachers' Association and dissociate themselves from All Assam College Teachers' Association. It was also mentioned that Shri Saikia was a top-ranking RCPI worker and had attended the District Committee meeting of RCPI held on August 17, 1976, where the 20-point economic programme was criticised and party workers were urged to mobilise the masses to agitate against the Government. Shri Saikia sent a petition on November 10, 1976, challenging his detention. His petition was examined in the Political Department and Shri Purkayastha, Joint Secretary (Political) recorded on the file that there was some force in

the detenu's contention that "Assam College Teachers' Association is a registered Association of Teachers and the call for unity is not a prejudicial act." The Joint Secretary recommended revocation of the order. The case was to be reviewed by the Advisory Board on January 8, 1977, but the detention order was revoked the same day. Shri R. Dutta, the then District Magistrate, Naogaon, who had issued the detention order in this case, wrote to the Political Department on January 18, 1978, as follows :—

"In this particular case, the initiative for detention is from State Police Headquarters. The SP, Naogaon was asked to submit a proposal to the DM for approval, which was done on November 4, 1976, sometime in the afternoon. Going through the grounds of detention furnished, I felt that they were not clearly established and needed the support of additional and stronger materials and I suggested to SP, Naogaon when this was discussed in the evening of November 5, 1976. Soon after around 10 p.m. or so, the Home Minister, Assam, urged me over phone to issue the order as this was urgent. Accordingly, order u/s 3 read with 3(i) of MISA was issued and I did not deliberately invoke Section 16A as suggested in the detention proposals."

19.66 Some illustrations of detentions ordered on non-political grounds are given below :—

- (i) Shri Kalu Singh alias Dharam Singh son of Shri Pyara Singh was detained under MISA under the orders of District Magistrate, Kamrup, dated August 19, 1975. Grounds of detention mentioned that he had been actively associating himself in criminal activities and on June 16, 1975 at 9.30 p.m. he had assembled near India Carbon Gate with his associates Shri Swapan Kumar Das and Shri Suresh Chand Saha with a few wagon breaking implements with the intention of causing damage to railway wagons and commit theft therefrom. It was further mentioned that on seeing the police, he gave up his plans. No details of his previous criminal activities were given. The case was reviewed by the Advisory Board on September 26, 1975, and it was observed that "Grounds against him are vague. The Board is not satisfied that he was indulging in any activities prejudicial to the maintenance of services essential to the community. In the opinion of the Board, there is no sufficient cause for his detention." The order was revoked on September 29, 1975.
- (ii) Shri Gopal Swami alias Gopal Maharaj, a businessman of Fancy Bazar, Gauhati, was detained under MISA on January 6,

1976. Section 16A was invoked in this case. It is seen from the grounds of detention that recourse to MISA was taken because he had refused to hand over his godown at Goreshwar requisitioned by the Government for keeping paddy procured by Assam State Marketing Federation. He is alleged to have threatened the Federation Employees on December 6, 1975, when they had gone to take over the godown. The case was examined in the political Department for confirmation and Shri S. K. Purkayastha, Joint Secretary, recorded that "The moot point in this case is whether the penal laws were not sufficient for dealing with such a case. It appears that the detenu has persistently been refusing to make available his godown at one plea or another despite requisition orders issued by D. C., Kamrup. Logical course, it appears, would be to prosecute him for obstructing Government servants in the discharge of their duties and to fix the rent of the godown under relevant laws. Apart from the fact's shown, nothing more has been adduced to show that the detenu had actively, either overtly or covertly worked against the paddy procurement policy of the Government." The Chief Secretary, however, recommended that the detention may be approved but the declaration made by the District Magistrate that the detention was necessary for dealing effectively with the emergency, should be revoked. The effect of this decision, legality of which is disputed was to convert detention under Section 16A into a detention under normal provisions of MISA. The detention was reviewed by the Advisory Board on March 13, 1976. Shri Gopal Swamy contended before the Board that the godown was in the occupation of his wife and grown up daughter and he could not conveniently hand over the possession to Government. The Board held that even if the allegations against the detenu, i.e., his refusal to hand over the godown to the Government without sufficient reason was correct, he was liable under provisions of ordinary laws. The Board did not find the order sustainable and it was revoked on March 15, 1976.

- (iii) Shri Moti Ram Kataki was detained under the orders of District Magistrate, Lakhimpur, dated October 4, 1976. Grounds of detention show that on September 13, 1976, on the occasion of Tithi of Mahapurush Madhav Dev, Shri Kataki had not allowed one Shri Neog to distribute Prasad in the village Namghar on the plea that Shri Neog had subjected himself to sterilization operation. It was stated that this conduct of Shri Moti Ram Kataki had adversely affected the Government's family planning programme. The order was confirmed by the Government on October 16,

1976. It is also seen from the file that Shri Katak, who was working as an Additional Supervisor Kanungo in the office of the Assistant Settlement Officer, was placed under suspension on September 28, 1976, for his alleged propaganda against the family planning programme. He remained under detention till January 18, 1977. Another person Shri Narbahadur Chhetri was detained under the orders of District Magistrate, Lakhimpur, dated June 8, 1976, for his alleged rumour mongering aimed at making the family planning drive unpopular. Shri S. K. Purkayastha, Joint Secretary, recorded on June 21, 1976, that "since action against Shri Chhetri under DIR had already been taken, the Chief Secretary might like to discuss the case with the DIG Special Branch before considering the question of confirmation". The order was confirmed on June 28, 1976 and Shri Chhetri remained in detention till December 30, 1976. Shri Arbind Das son of Shri Kedar Das, another person from Lakhimpur, was detained on October 4, 1976, allegedly for making propaganda against the family planning drive. The order was confirmed on October 16, 1976 and Shri Arbind Das remained under detention till February 7, 1977. In the case of Shri Vir Bahadur Chhetri son of Shri Lal Bahadur Chhetri, detained under the order of District Magistrate Lakhimpur on June 15, 1976, allegedly for indulging in loose talk and rumour mongering, which had led to the failure of a vasectomy camp in Lakhimpur District, Shri Purkayastha, had once again suggested that the Chief Secretary might discuss the matter with the DIG Special Branch before confirmation. However, this order was also confirmed on June 29, 1976, and Shri Vir Bahadur Chhetri remained under detention till January 18, 1977.

19.67 Scrutiny has revealed that majority of the detentions, political as well as non-political, were ordered under the directions from the Special Branch.

19.68 150 detentions were ordered under un-amended MISA. 135 were reviewed by the Advisory Board. Orders in respect of the remaining seem to have been revoked before their cases became due for consideration by the Review Board. Scrutiny has revealed that in 32 cases the Board found that the detention orders were not sustainable and detenus concerned were released. Use of Section 16A was made very sparingly in the earlier phases of emergency and the administration appears to have preferred to depend on the normal provision of MISA and even in respect of some alleged activities of banned organisations and prominent political workers, detention orders were issued without invoking Section 16A and grounds of detention were communicated to the detenus concerned. Most of these orders were upheld by the Advisory Board.

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19.69 Detention orders issued by the District Magistrate under Section 16A were required to be confirmed by the State Government within 15 days. The District Magistrates used to send the detention order, declaration under Section 16A and the grounds of detention to the Home Department, where cases were processed for obtaining orders of confirmation from the Chief Minister. Scrutiny has revealed that detention orders under 16A in respect of the political detenus were processed in bunches and were invariably confirmed. Non-political detentions were scrutinised thoroughly by the Joint Secretary (Political), Shri S. K. Purkayastha, who used to record his opinion and recommend revocation of the order where he found that the grounds of detention could not justify the detention order. Scrutiny has revealed that his views were accepted only in one or two cases and the orders issued by the District Magistrates were invariably confirmed despite the recommendations of the Joint Secretary (Political) to the contrary. In some cases, the Chief Secretary used to agree with the Joint Secretary partially and recommend that the declaration that detention was necessary to deal effectively with the emergency should be allowed to lapse, but detention should continue. The effect of this decision was to convert the detention order under Section 16A into an order under un-amended MISA. However, this is legally unsound. The Act clearly lays down that if the declaration issued under Section 16A is not confirmed within 15 days, it ceases to have any validity. It is also clear that the detention order issued by invoking Section 16A cannot stand by itself after the lapse of the declaration under Section 16A. If the Administration thought it necessary to detain such persons under the un-amended MISA, the proper course was to revoke the detention order under Section 16A and issued a fresh order under the un-amended MISA. Scrutiny of relevant files does not show that this was done.

19.70 Scrutiny has revealed that only in three cases out of the total of 383 cases under Section 16A, detention orders were not confirmed by the State Government. The following illustrations extracted from the files will indicate the manner, scope and effect of scrutiny of detention orders carried out in the Political Department :—

- (i) Shri Puri Sarfa, an alleged illicit distiller, was detained under the orders of District Magistrate Tejpur on September 1, 1975. It was mentioned in the grounds of detention that in a raid on his house on August 23, 1975, two to three litres of fermented wash was recovered. Shri Purkayastha, Joint Secretary (Political) wrote that "In view of the Cabinet decision taken earlier, the Government may approve the detention order". However, the Chief Secretary recorded that "since a specific offence had been detected in this case, it would be feasible to prosecute the offender under the Excise Law". This was approved by the Home Minister and the detenu was released on September 23, 1975.
- (ii) Shri R. Barua, District Magistrate, Shibsagar, issued a detention order in respect

of one Shri Manik Chand Das son of Shri Biren Das, an alleged criminal. File shows that the Political Department observed that Shri Manik Chand Das was already undergoing imprisonment for 26 months. Detention was not confirmed and a letter was written to the DIG CID requesting him to ensure that orders are not passed in cases where the detenus are already undergoing imprisonment.

- (iii) Shri Bhadender Nath Sharma was detained under the orders of District Magistrate, Darrang, dated May 26, 1976, on account of his alleged cheating activities. It was mentioned in the grounds of detention that he had cheated some poor landless people of Mangaldoi Sub-Division in procuring from them Rupees two to three thousand on the assurance of arranging land for them. A case under Section 420 IPC was registered against him in this connection. Shri S. K. Purkayastha, Joint Secretary (Political) pointed out in this case that "It is not clear how the cheating indulged in by the detenu is prejudicial to maintenance of public order. It also appears that the detenu hardly belongs to the category, the detention of which is essential for effectively dealing with the Emergency". The Chief Secretary also wrote that the order was not fit for confirmation as action under normal law had already been initiated. Detention order was, however, approved by Shri H. S. L. Saikia, the then Home Minister, on August 9, 1976. Shri Sharma remained in detention till January 16, 1977.
- (iv) Shri Kundu Ram Bora son of Shri Mittu Bora was detained under the orders dated December 4, 1975 of DM Tejpur. It was alleged in the grounds of detention that he was opposing the procurement of paddy from the villagers by the Government agency. The case was examined in the political Department and Shri Purkayastha pointed out that the order was wrongly issued under section 3(1)(a)(ii) instead of 3(1)(a)(iii). He recorded that "the grounds of detention did not tally with the detention" and that "the declaration under section 16A did not appear to be strictly necessary in these cases". Files show that the matter was discussed with the Chief Secretary and the order was confirmed. The DM was at the same time asked to consider the revocation of the order. The DM sent fresh grounds of detention of January 2, 1976. These mentioned some activities on the part of the detenu, which could support the allegation that he was a threat to the public order. It was pointed out by the Political Department on January 17, 1976 that the "modifications in the grounds of detention would not help and the order was required to be revoked". Accordingly,

the detention was revoked but a fresh detention order was issued on January 23, 1976, which was confirmed on February 4, 1976. It was revoked on April 20, 1976, after discussion in a meeting attended by the Home Minister, the Chief Secretary, IGP Assam, DIG Special Branch, SP Special Branch and SP Darrang.

- (v) Shri Badsama Laskar son of Shri Dilkadar Ali Laskar was detained on May 1, 1976, under the orders of DM Cachar. The grounds of detention referred to one specific activity relating to some property matter. It was alleged that he did not allow his tenant to take over the possession of the land in accordance with the land reform policy of the Government. The Joint Secretary (Political), in his noting dated May 14, 1976, recorded that "Though the subject had tried to discredit the Government in implementing its policy, his activities did not have the political nexus that affect the maintenance of public order". However, the Chief Secretary recorded that the detention orders appeared to be justified and the orders were confirmed by the Government.
- (vi) Shri Amar Chand Dhri was detained under the orders of DM Sibsagar issued on September 13, 1975. It was mentioned in the grounds of detention that Shri Dhri was a habitual smuggler and blackmarketeer of essential commodities. There were references to two cases of 1973, one case of 1974 and one case of July 1975. It was also mentioned that a case under section 114 DIR was registered against him in July 1975. Shri Purkayastha, Joint Secretary (Political) recorded that "the grounds mentioned are not fresh in all circumstances. It also appears that the detenu is being prosecuted under DIR for not displaying his stocks of baby food correctly. The last few lines of the last charge mentioned in the grounds of detention also appear to be vague". File shows that the case was discussed with the Special Branch and after obtaining their views, Shri Purkayastha recorded that "DIG, Special Branch, has suggested that the Government may approve the detention but not confirm the declaration. At the same time, it has been pointed out that the case will not stand scrutiny of the Advisory Board because grounds of detention are vague. In view of the weakness of the material against the detenu, the Government may allow the detention order to lapse". The Chief Secretary, however, recommended approval of the detention order and cancellation of the declaration, which meant action under the unamended MISA. This was approved by the Minister. The file, however, does not show whether the detention order was revoked and a fresh order was issued, as was required under the Act. In the case of one Shri Kashmiri Lal Vyas also, detained under the orders of DM

Darrang on the ground of hoarding of food-stuffs, it was decided to approve the detention but allow the declaration to lapse.

19.71 Four-monthly Reviews of MISA cases were conducted in the Political Department. The cases of the persons, whose detentions became due for review, were sent to the Special Branch mostly in bunches for their recommendations. Scrutiny has revealed that the Special Branch used to forward recommendations for the continued detention of all the detenus without indicating any criteria followed by them for this purpose. The Special Branch also used to send recommendations for the extension of parole of such detenus, who were then on parole and whose activities did not warrant their confinement. Cases do not appear to have been examined individually and it is not clear whether any reports were called for from the detaining authorities.

19.72 The scrutiny has revealed that quite often cases for review were considered in meetings called by the Home Minister and attended by the Chief Secretary, Joint Secretary (Political), IGP and DIG Special Branch. Sometimes an *ad hoc* committee with Home Minister as Chairman and Chief Secretary and Home Secretary as Members used to meet for this purpose. Scrutiny has also revealed that in a few cases the decision to release a detenu was taken on the basis of a discussion between the Chief Minister or Home Minister and the DIG, Special Branch. The case of Shri Bhadrul Huda, detained under the orders of DM Dibrugarh on June 27, 1975 may be quoted as an illustration. It is seen from the file that his order was revoked on the basis of a discussion between the Chief Minister and the DIG Special Branch. Reasons for his release are not indicated on the file. After the receipt of recommendations from the DIG, Special Branch, the cases used to be put up to the Home Minister for obtaining his orders regarding the continued detention of the detenus, whose cases were reviewed. Scrutiny has revealed that in several cases, the orders of continued detention were issued without obtaining the formal orders from the Home Minister. Proceedings of reviews held in November 1975, March 1976, April 1976 and December 1976 do not appear to have been sent to the Minister for his formal orders and the orders for continued detention were issued by the Joint Secretary (Political). In some cases orders for continued detention were issued from the Political Department in anticipation of formal orders from the Home Minister. Cases of 53 detenus, whose review was due in October, 1976, were sent to Special Branch on October 21, 1976. The Special Branch sent their recommendations for the continued detention of all of them on October 28, 1976. Orders were, accordingly, issued on October 31, 1976. Approval of the Home Minister was obtained on December 18, 1976.

19.73 Most of the political detenus were released only after December 1976. Revocation orders in respect of the members of banned organisations were issued after the revocation of Emergency. Some persons were also released during the period of Emergency, but decisions to this effect do not appear to

have been taken during the formal review of these cases. Scrutiny has revealed that such decisions were taken during the meetings of an *ad hoc* committee held under the Chairmanship of the Home Minister, which used to be attended by the Chief Secretary, IGP, DIG Special Branch, SP Special Branch, Joint Secretary (Political) and SPs of the Districts concerned.

19.74 Scrutiny of parole cases has revealed that requests for grant of parole were processed in the Political Department and parole was granted on the recommendations of the Special Branch. It is also seen that the Special Branch used to consult the Superintendent of Police concerned before making their recommendations. The recommendations of the District Magistrates were called for only in the cases of persons detained on the recommendations of Food and Supply Department. Scrutiny has also revealed that once a person was released on parole, his case was invariably considered for extension of parole whether there was a formal request from him or not provided he was not a member of a banned organisation. It is also seen from the files that a fairly large number of detenus released on parole in the first instance were allowed to remain on parole till the revocation of the orders of their detention. At the time of making recommendations for the continued detention of the detenus, the Special Branch used to make specific recommendations for the extension of parole in respect of the detenus, who were then on parole and whose activities did not warrant cancellation of this facility granted to them. There are a few cases of cancellation of parole on the basis of recommendations of the Special Branch based on the objectionable activities of the detenus concerned during the period of parole. For example, parole of Shri Santipada Ray was cancelled because of his indulgence in trade union activities during the period of parole. However, he was again granted parole which was extended till he was finally released. It is also found that once it was decided to release a certain detenu and his case was referred to the Central Government for their approval, he was released on parole immediately, and was allowed to remain on parole until his detention order was revoked.

19.75 Scrutiny has revealed that as many as 231 detenus were granted parole on different grounds, such as, detenus' illness, illness of a family member, death of a family member, marriage of a family member, etc. This list includes even the members of banned organisations, like RSS, CPM, etc. Requests from students for grant of parole to enable them to take examinations were also considered sympathetically. A few parole cases are given below :—

- (i) Shri Bimlender Chakravorty, a CPM leader of District Dibrugarh, was detained on August 21, 1975. He was released on parole for one month on June 30, 1976. Parole was extended from time to time until the order was revoked on January 19, 1977.
- (ii) Shri Sib Charan Sarkar of District Darrang, was detained on August 23, 1975, on

account of his CPML activities. The request of his wife for his release on parole in March 1976 on the ground of illness of their new born child was rejected on the basis of the recommendations from the Special Branch. However, the case was reviewed again when a fresh representation was received from the detenu's wife in July, 1976, and Shri Sib Charan was released on parole for one month on September 22, 1976. It was later extended by one month.

(iii) Shri Haji Maulana Abdul Kudas was detained under the orders of DM Tejpur dated October 20, 1975. He was released on parole for one month on February 19, 1976 to enable him to look after his wife during her delivery. He was released on parole for the second time from April 8 to April 15, 1976.

(iv) Shri Ashok Barkatki, a medical student was detained under the orders of DM Dibrugarh dated August 28, 1975. He was actually arrested on February 9, 1976. He was released on parole from February 16, 1976, to March 31, 1976 to enable him to take his final year examination. He was also allowed to stay in AMC Hostel during this period. Parole was extended several times and he remained on parole till September 2, 1976. He was again released on parole on September 20, 1976; and it was extended from time to time until the order was revoked on December 18, 1976.

19.76 Scrutiny has revealed that parole was refused in three cases on the grounds of death in family, in four cases on the grounds of marriage of a dependant member and in 34 cases on the grounds of severe illness of a family member. Some of the cases of refusal of parole are given below :—

(i) Shri Basaruddin Sheikh alias Shri Basruddin Sheikh of Goalpara, detained on October 26, 1976, was refused parole on the grounds of death of his father on November 29, 1976, because he was suspected to be an agent of BDR and his release was not recommended by the Special Branch.

(ii) Shri Thangliana Lushai, detained under the orders of DM Cachar on September 8, 1975, was not granted parole when his mother died in March 1976 because the SP Cachar was of the view that the detenu had links with MNF and he was likely to go underground if he was released on parole.

(iii) Shri Narayan Chand Kataki was detained under the orders of DM Naogaon dated June 27, 1975, on political grounds. He applied for parole on September 17, 1975, on the ground of marriage of his own daughter fixed for October 8, 1975. DM

Naogaon wrote to the Chief Secretary recommending the release of Shri Kataki for 10 days with effect from October 4, 1975. DIG Special Branch also sent on September 26, 1975 the same recommendations. It is seen from the file that the detenu had requested the Jail authorities to provide him with a pair of spectacles as recommended by the Medical Officer. He resorted to hunger strike for indefinite period from September 29, 1975, as a protest against the refusal of the Jail authorities to comply with his request. Shri Golap Borbora and Dulal Bhuyan, his co-detenus also went on sympathetic hunger strike for 24 and 12 hours, respectively. File shows that the detenu was informed on September 30, 1975, that the spectacles were not admissible under Assam Detention Orders and he abandoned the hunger strike the same day. When recommendations of the Special Branch for the release of Shri Kataki on parole with effect from October 4, 1975 were received in the Political Department, Shri S. K. Purkayastha, Joint Secretary (Political) recommended two days parole only in view of the latest instructions from the Government of India regarding the agitation announced by the Socialist Party units from October 2, 1975. Chief Secretary Shri B. K. Bhuyan recorded the following note on September 30, 1975 :—

"Hunger strike in Jail should be severely dealt with under the law. Special Branch may advise transfer of some prisoners to Cachar. Discipline must be enforced. The Jail Superintendents should be cautioned. No spectacles at Government cost and no parole either to Narayan Kataki."

Shri Kataki was informed on October 1, 1975, that his request for parole was rejected.

(iv) Shri Gopal Borbora of the Socialist Party of India was detained under the orders of DM, Dibrugarh dated June 27, 1975. He applied on February 7, 1976, for grant of parole for one month to enable him to attend the wedding ceremony of his adopted daughter fixed for March 7, 1976. This was recommended by the DM Naogaon also. File shows that a letter was written to Special Branch on February 17, 1976 calling for their recommendations. No reply seems to have been received from the special Branch. File does not contain any order regarding grant of parole to Shri Gopal Borbora.

(v) Shri Jaikishan Maheshwari, an alleged hoarder of mustard-oil, was detained under the orders of DM Lakhimpur dated September 23, 1976, after he was released on bail in

a case under the E.C. Act. He applied for parole on November 26, 1976 on the ground that his daughter's marriage was to be solemnised on December 25, 1976. The request was rejected on December 21, 1976, on the basis of the report of the Superintendent of Police to the effect that the "detenu had 12 or 13 brothers who are alive and could look after his daughter's wedding."

- (vi) Shri Khagen Gogoi, a Congress MLA, was detained under the orders dated October 4, 1976 of DM, Jorhat, as an alleged anti-social element. As per the grounds of detention, he is shown to be responsible for the cancellation of a public meeting to be held at Kurukani, PS Moran Sibsagar, where Shri Hiteswar Saikia, Home Minister, was supposed to explain to the people the significance of the 20 Point Programme. It is also mentioned in the grounds of detention that Shri Gogoi and his associates were making false propaganda regarding the failure of the State Government to implement the 20-Point Economic Programme. A telegram containing his accusation sent by Shri Gogoi's associate Betha Ram Deuri to the Prime Minister and the President of India, was also mentioned in the grounds of detention. Shri Gogoi was charged with indulging in character assassination and asking for the resignation of the Chief Minister. Shri Gogoi sent a petition on October 4, 1976 for his release on parole on the ground of his own illness and illness of his parents. No action seems to have been taken till November 15, 1976, when he sent an application to DM Jorhat saying that he had come to know that his wife was ill. He requested the DM to allow him to visit his house under escort for a few hours. The file of the Home Department does not show how this request was processed. On November 2, 1976, the Special Branch sent recommendations against grant of parole to Shri Gogoi. On December 6, 1976, the Special Branch forwarded to Joint Secretary (Political), a copy of the medical report of Dr. M. C. Dutta of Assam Medical College on Shri Gogoi. This report shows that Shri Dutta had had an attack of severe chest pain. Dr. M. C. Dutta concluded his report by saying that "pain of the chest under investigation. IHD is difficult to exclude". Shri Gogoi sent another application on December 10, 1976, for his release on medical grounds. It was rejected on the recommendations of the Special Branch, which wrote that "Shri Gogoi may not be granted parole for the present in view of his known prejudicial activities". File shows that Shri Gogoi was released on parole on January 1, 1977.

and his order was revoked on January 15, 1977.

BIHAR

19.77 The total number of detentions under MISA, COFEPOSA and DISIR in the State during the emergency was as below :

MISA	... 2360
COFEPOSA	... 240
DISIR	... 7747

Categorywise break-up of detentions under MISA is as follows :

Political Parties	... 530
Banned Organisations	... 269
Anti-socials, criminals and others	.. 1561

19.78 Bihar was one of the few States, where the Home Department did carry out a scrutiny of the grounds of detentions. In several cases, insufficiency or irrelevance of grounds of detention or legal flaws were pointed out by the Section Officer or Assistant Secretary (Home) but their objections were overruled in a majority of cases by the Home Secretary and sometimes by the Joint Secretary, who recommended confirmation of the detention order on administrative or political considerations. In some cases even objections by the Joint Secretary were overruled by the Home Secretary. Karimulla of District Patna, was detained on July 8, 1975 and the grounds of his detention referred to a single incident of distributing leaflets on July 4, 1975. He was also arrested under the DIR. The District Magistrate in his forwarding letter wrote, "although this is the only material available with me against this detenu, the SSP Patna reported to me that the detention was necessary for maintaining public order in Burhtown and, as such, this detention order was issued on the basis of single material mentioned above". Both the Assistant Secretary and Joint Secretary (Home) pointed out that the order was not fit for confirmation as the District Magistrate had issued it on the satisfaction of the SSP and not on his own satisfaction. But the Home Secretary, recommended confirmation of detention order and it was confirmed by the Chief Minister.

19.79 The grounds of detention mentioned in the case of Dhena Hansda of District Purnea, detained on August 30, 1975, related to some incidents of agrarian dispute. In this case, the order was based on the report of the Station House Officer forwarded by the Superintendent of Police. Joint Secretary (Home), recorded a note dated September 8, 1975, stating : "In my view, it could be a dangerous proposition to detain a person under MISA without taking recourse to normal laws and in relation to facts, which can be suitably dealt with under normal laws, likewise, it would be equally dangerous, if not more, to base a detention order merely on the report of the officer-in-charge of a Police Station". But the Home Secretary recommended confirmation of the detention order and it was confirmed by the Chief Minister.

19.80 The main attack in this State appears to have been directed against Chattra Sangharsh Samiti and Jan Sangharsh Samiti. Quite a number of persons were detained for their alleged association with the movement launched by Jan Sangharsh Samiti. Many of them were found to have no political background and their detentions were ordered merely on the basis of alleged participation in one or two secret meetings or a stray incident of alleged slogan shouting against the Government. Many of them were already arrested earlier under the DISIR and subsequently detention orders under the MISA were also issued against them.

19.81 Harideo Pandey and Shatrughna Kumar, both of District Madhubani were detained on October 3, 1975, on the basis of a single alleged incident of shouting anti-emergency slogans on October 3, 1975. The grounds of detention did not indicate any political background of these persons. Mahesh Sharma of district Monghyr was detained on March 6, 1976. The grounds of detention referred to two cases of the year 1974 and one report of participating in a secret meeting on July 4, 1975. The District Magistrate's report mentioned, "Shri Mahesh Sharma was found holding a secret meeting at the residence of Shri Rabish Chandra Verma in defiance of prohibitory orders". It is not clear what was meant by prohibitory orders in relation to a secret meeting inside somebody's residence. However, the detention was confirmed.

19.82 MISA was also used against 125 students. A majority of the students were detained on account of their alleged involvement in the agitational programmes of Chhatra Sangharsh Samiti. In several cases, the grounds only referred to their activities during the Bihar bundh in 1973-74 and no particular activity nearabout the time of declaration of Emergency or thereafter was indicated. Even the activities pertaining to the year 1973-74 were by and large confined to the violation of the prohibitory orders and participation in anti-Government proceedings without revealing any trend towards violence. It was revealed that a majority of students, who had come to adverse notice of the administration at that time, were singled out for detention under the MISA after the declaration of emergency. In some cases, students were detained merely on the basis of a single alleged incident during the emergency, while no previous agitational background was shown against them.

19.83 In the case of Sudhindra Raj Hans of District Monghyr, detained on November 7, 1975, the grounds of detention referred to four incidents of 1974 and two of 1975. One incident of January referred to a secret meeting in which the detenu allegedly participated in taking a decision to boycott the Republic Day celebrations. Another incident of June 27, 1975, referred to the detenu's alleged participation in the act of forcing the shopkeepers to close their shops. Section Officer in the Home Department pointed out that the grounds were not proximate to the date of detention and the order was not fit for confirmation. But the Assistant Secretary recommended the case for confirmation and the confirmation order was issued on November 20, 1975.

19.84 Shri Ashok Kumar Varma, District Hazaribagh, was detained on April 4, 1976. The grounds of detention referred to one incident of October 16, 1975, when he was alleged to have taken a decision for pasting wall posters, which appeared on December 10, 1975. The grounds did not mention that he was caught in the act of pasting wall posters nor any material was produced to substantiate the allegation that he had decided to commit this act on October 16, 1975. It is noteworthy that his detention was ordered almost about six months after his alleged decision to paste wall posters; and 4 months after the appearance of the wall posters.

19.85 Ashok Kumar Singh of District Monghyr was detained on October 23, 1975. The grounds of detention referred to 3 incidents, one of September 1974 and the other of January 1975. One more incident of June 27, 1975 was mentioned, in which he was alleged to have moved about the town with his associates to force the shopkeepers to close their shops. He was arrested later on and was facing trial in respect of the alleged incident at the time of his detention under the MISA. In this case the Home Secretary noted on November 1, 1975, stating, "the materials are somewhat old and lack in specific details. It is also not clear whether Shri Singh is on bail or not". But he recommended confirmation of the detention in view of the agitational programme of Chhatra Sangharsh Samiti and the detention was confirmed.

19.86 Criminals and anti-socials comprised about 2/3rd of the total detentions under MISA in this State. Despite the instructions of Government of India not to use the powers under MISA against such criminals, whose activities did not impinge on public order, quite a number of such persons were detained under the MISA. The scrutiny of detention cases has revealed that quite often the distinction between public order and law and order was completely forgotten and MISA was used against ordinary and petty criminals, whose acts could not be regarded as affecting public order in any manner. As in some other States also the police in this State chose to use MISA as a short cut to put persons behind bars and avoid recourse to normal laws, which required detailed investigation and prosecution.

19.87 Shri Sukh Pal Taiwala of District Ranchi was detained on August 8, 1975 on the grounds of committing offences in respect of railway property. Grounds of detention referred to only two cases, one of July, 1971 and another of March, 1973. The Assistant Secretary, Home, pointed out during scrutiny that the grounds were old and the case was not fit for confirmation but the JS, Home, recommended confirmation of the detention and it was confirmed by the CM. In the case of Murli Dhar Banka of District Ranchi, detained on August 8, 1975, the grounds of detention referred to a single case under sections 420/120(b), 467, 468 IPC of March 25, 1973. The detention was confirmed in spite of objection by the Assistant Secretary, Home. Shri Banka continued in detention

till March 23, 1977 and even in the periodical reviews, his case was not considered for revocation.

19.88 Bohoran Yadav of District Bhagalpur was detained on October 23, 1975. The grounds of detention referred to three crimes of burglary. In this case, Joint Secretary (Home) noted —

"It has been made clear to all DMs, a number of times, that a person cannot be detained under MISA just for any individual crime because the acts constitute of threat to law and order and not to public order. It has also been made clear that individual crime comes under the purview of public order only if it is accompanied by some other act affecting the even tempo of life of the community as a whole. Some judgments of the Supreme Court delivered on the subject and laying down distinction between law and order and public order have also been circulated. Despite all these instructions, some of the DMs and SPs continue to commit mistakes, and issue orders of detention on grounds which do not strictly conform to the test of law. This testimony has to be discouraged regardless of the antecedents of the persons involved. Moreover, the Government of India have also categorically stated that detention order should not be made unless the grounds satisfy the conditions laid down under sub-section (1) of section 3 of MISA."

The detention order in this case was not confirmed.

19.89 Scrutiny of cases has revealed that in a large number of cases, detention orders were issued on the basis of reports sent by SHOs. After June 1976, the SPs were directed to give a certificate about correctness of the material sent to the DM for issuing detention order. But even after this the SPs or Dy. SPs went on merely forwarding the report of the SHOs in a somewhat routine manner. It was also noticed that in several cases, details of criminal cases instituted against the persons concerned were not mentioned in the grounds and mostly no previous convictions were shown. The Police report indicated criminal cases in which the detenu was allegedly involved, but the outcome of the prosecution was rarely indicated and in some cases even acquittal was shown.

19.90 23 public servants were detained under MISA. Some were detained on grounds of alleged corruption also. Shri Radhey Shyam Pandey, Assistant Engineer of District Siwan was detained on August 22, 1976 on the allegation of being associated with Chhatra Sangharsh Samiti and RSS. In this case Shri R. L. Mishra, Joint Secretary, Ministry of Home Affairs, Government of India, sent a communication dated November 23, 1976 to the Chief Secretary of Bihar. An extract from this communication is cited below :—

"Radhe Shyam Pandey was detained under MISA on 22-8-1976 as the D.M.,

Siwan found his activities prejudicial to the security of the State and maintenance of public order. After his appointment as an Assistant Engineer in the Tubewell Division, Siwan, Radhe Shyam Pandey developed some differences with the senior colleagues, namely, Bharat Singh, Executive Engineer, Tubewell Divn. Siwan and D. K. Yadava, S.D.O. of the same Division over the issue of passing a bill of a contractor, who had allegedly bribed the above mentioned Ex. Engr. The Departmental colleagues pressed upon Radhe Shyam not to take this issue, but the latter did not budge under their pressure. Radhe Shyam Pandey is an outspoken man in the habit of sending complaints to VIPs regarding the bungs of his own departmental officers. He took up the issue of alleged bungling of Rs. 40 lakhs by officials of his department. He sent information alleging misappropriation to the concerned high officials of the State Govt. and demanded an enquiry into the affairs of the Tubewell Division, Siwan. This brought him to the adverse notice of his department and he was suspended for some time. Pandey, therefore, went to Delhi and sat on Dharna in front of the Rashtrapati Bhavan demanding justice. It is reported that the senior officers at Delhi assured him to look into the matter and he was thereafter reinstated. His reinstatement created anxiety among the corrupt officials of his department, who considered him a trouble maker. They started pulling strings and finally succeeded in winning over the D.M., who issued orders for a detention of Shri Pandey. It would, therefore, appear that the detention of Shri Radhe Shyam Pandey was not *bona fide*."

Despite his communication, Shri Radhe Shyam continued in detention up to March 21, 1977.

19.91 Four-monthly review of detention cases was carried out by a Review Committee comprising Divisional Commissioner DIG (Range), concerned, DM and SP. Scrutiny of cases has revealed that the Review Committee recommended revocation of detention in very rare cases. In several cases, the recommendation of the Review Committee for release of a detenu was not accepted. Shri Lalua Rawat of District Sitamarhi and seven others were detained on January 22, 1976. They included five members of one family. Grounds of detention referred to a family dispute relating to property. On May 3, 1976, the Review Committee recommended revocation of their orders of detention. But this was not agreed to by the State Government and their detention continued till February 3, 1977. One of the detenus Kishori Rawat died during detention.

19.92 Several cases were noticed in which the DMs failed to send their reports and necessary

documents for confirmation of detention orders to the State Governments within the stipulated period of 15 days. This resulted in the detenus remaining in illegal detention after the expiry of the 15 days' period. (Cases of Chhedi Dewan of District Battia, Shatrughana Chaubey, District Bhojpur). In the case of Kamla Rai of District Rohtas, the order of detention was issued on February 23, 1976, but the papers were received in the Home Department after the expiry of the statutory period of 15 days. Consequently, the order of detention was not confirmed by the State Government. But from the scrutiny of the file, it is revealed that the person continued in detention till April 7, 1976. The Additional Secretary noted on April 16, 1976, "Prima facie this appears to be a sad case involving violation of legal requirements." The Home Department again wrote to the DM to revoke the order. It appears from the file that the DM issued another detention order on May 5, 1976. This was also not confirmed by the State Government. Thereafter, the DM issued another detention order on May 22, 1976, and this time the State Government confirmed the order of detention.

19.93 In some cases even though the orders of detention were not confirmed by the State Government, the DMs redetained a person on similar grounds shortly afterwards. Shri Alakh Niranjana of District Novada was detained on December 1, 1975. His detention was not confirmed by the State Government as the Home Department pointed out that the grounds of detention did not refer to any specific incident and were too vague for confirmation. Accordingly, the DM was advised to revoke his order of detention. The DM redetained Shri Alakh Niranjana vide his fresh order dated December 19, 1975 and the grounds of detention referred to a report from SHO, Warshaliganj stating that Shri Alakh Niranjana was found shouting slogans against the Government on November 25, 1975. It is significant to note that first detention order against Shri Alakh Niranjana was passed 5 days after this alleged incident and yet this incident was not mentioned in the grounds of detention at that time. The case of Shri Sitaram Singh of District Novada is also similar.

19.94 Requests for parole were decided at the State Government level and there were very few cases in which request for parole was refused. However, in the case of granting parole to student detenus desirous of appearing at an examination, some strictness was observed. The practice followed was that student detenus were allowed to take examinations if the College/University agreed to hold them inside the jail premises. However, for practicals, which could not be conducted inside the jail, students were released on parole. It was also seen that while in some cases parole was not granted on such strong grounds, as sickness of husband or daughter, it was granted readily to some anti-socials on similar or less serious grounds.

19.95 Smt. Mohini Jha of District Darbhanga was refused parole when her husband fell sick in January, 1976. Her request for release on parole to

undergo operation was turned down and she had to take treatment in the jail. There was deterioration in her health in June, 1976, but parole was not granted despite medical recommendation. She was ultimately granted parole only in November, 1976.

19.96 Shri Mahavir Prasad Yadav, detained on February 10, 1976, was refused parole when his wife fell ill in May, 1976. In the case of Shri Ram Shreshtha Rai of District Samastipur, request for parole on account of the illness of his widowed sister, entirely dependent upon him, was turned down on August 13, 1976. Another request on the same ground was turned down on October 21, 1976. Then in November 1976, he applied for parole saying that he wanted to use this period for clearing some Government dues. On this ground, parole was granted.

19.97 Shri Rattan Lal Das of District Purnea was detained on account of criminal activities. His son submitted an application to the Chief Minister alleging that his father was wrongly detained and was also ill. The CM granted one month's parole to the detenu on this application. Similarly, another detenu Shri Rashid Kunjara of District Hazaribagh, detained on account of his criminal activity, was directly granted parole for one month on orders from CM's Secretariat.

GUJARAT

19.98 The total number of detentions under MISA and other Preventive Laws in this State was as below :—

MISA	1762
COFEPOSA	307
DISIR	2643

Out of 1762 persons detained under MISA, 91 were Pakistani nationals and in respect of 16 detenus unamended provisions of the MISA were applied. Thus, the total number of persons detained by using section 16A was 1655. The break up of cases of detention under MISA is as follows :—

Political Parties	404
Banned Organisations	135
Anti-socials, criminals and others	1223

The largest number among political detenus was of members and associates of BJS (247) while RSS members sympathisers (128) topped the list among banned organisations.

19.99 At the time of proclamation of Emergency, the Janata Morcha Government was in power and there were no detentions at that time on political grounds. The spate of detentions of persons with political affiliations commenced from March 13, 1976, after the President's Rule was proclaimed in the State on March 12, 1976. After

this date approximately 600 persons were detained under the MISA on political grounds. Immediately after the proclamation of the President's Rule on March 12, 1976, the State Government sent wireless messages to all districts mentioning names of persons who were to be considered for detentions. A large number of persons, allegedly connected with political opposition parties, like the BJS, Congress (O) and Socialists were detained in the months of March and April 1976.

19.100 The detention orders were passed by the District Magistrates on receipt of a report from the Superintendents of Police concerning alleged objectionable activities. For confirmation of the orders, the cases were processed in the Home Department and final orders of confirmation were passed by the Home Minister during the Janata regime and by the Governor during the period of the President's Rule. The procedure of obtaining opinion from the Law Department as adopted in some States, like U.P., was not followed here. The Home Department had kept a cyclostyled note mentioning only the relevant sections of the MISA and the procedure for confirmation of detention orders in which particulars of the alleged grounds of detentions were not mentioned. This cyclostyled note was put up to the Home Minister or Governor for orders and only in a few cases some officer of the Home Department gave an opinion against confirming the order, but it was mostly ignored. In the case of Mohindra Bhai Gopal Das Desai, District Kaira, the grounds mentioned were that he had participated in Maha Gujarat agitation in 1956-57, had gone on fast in August 1972 to support the demand for equal distribution of sugar in rural and urban areas and in 1976 had threatened to start an agitation on the issue of shortage of edible oil. The Under Secretary, Home, noted that the ground were insufficient. But the detention was confirmed by the State Government.

19.101 According to the information given by the State Government in 188 cases, the detention orders passed by the District authorities were not confirmed.

19.102 In the case of political detenus, it was found that immediately after the fall of the Janata Morcha Government on March 12, 1976, detentions were ordered on the basis of reports of the police stating that the detenu was either a member or sympathiser of one of the opposition parties constituting the Janata Morcha, namely, Jan Sangh, Congress (O), Socialists, etc. and after the fall of the Janata Government, he was likely to indulge in activities prejudicial to law and order or emergency. In a number of cases, no recent activity of the person was mentioned. The police report only gave details of his participation in opposition party meetings and agitations in the years prior to 1975. Particularly in the case of detenus belonging to Jan Sangh, this practice was followed in a majority of cases. Tara Chand Rijhumal Sindhi of District Sabarkantha was detained on March 13, 1976. The grounds of detention given in his case only revealed that he worked for Jan Sangh and in 1971, he had incited communal

passions. It was also mentioned that he was making complaints against Government officers. Shri Narain Bhai Chottu Bhai Naik of Ahmedabad was detained on July 16, 1976, on the ground that he and five others were active Jan Sangh workers and it was feared that their activity will disturb public order. Police Commissioner's report did not mention any specific activity regarding this detenu.

19.103 Shri Raman Lal Hiralal Joshi of District Panchmahal was detained on March 3, 1976, on a police report that he was an active Jan Sangh worker since 1968 and had participated in various meetings and agitations of the party between 1969 and February 1974. The detention was confirmed but shortly afterwards the Governor called for the file and ordered on April 13, 1976 that his release be recommended to the Central Government. But the Government of India did not agree to the proposal and he continued in detention till January 23, 1977. Shri Chandrachud Singh, District Banaskantha was detained on July 20, 1976 on a police report that he was a fiery speaker and a member of SSP. In 1973, he had addressed a meeting at Deesa criticising the Government. Thereafter, he went out of the State and on his return in July 1976, started spreading news that he had come with a message from Shri Jayaprakash Narayan.

19.104 In 19 cases, the orders of detention were issued directly by the State Government. A scrutiny of these cases has revealed that in a few cases, the Governor himself directly ordered the detention of persons without there being any material against them on record. In some cases, the orders of detention were probably issued at the instance of local Congressmen. Shri Khodi Das Patel of District Rajkot was detained under the order of the Governor on November 17, 1976. It was noticed that one Shri Sudhir Joshi, Secretary, Rajkot City Congress, had sent a list of 149 persons of Rajkot City alleging them to be members of RSS and anti-socials. This list was referred to DIG, CID by the State Government. After verification, it was reported that out of 149 persons, sufficient grounds were not available in respect of 66 persons and Khodi Das Patel was one of them. Apart from this, one Manohar Singh Jadeja also sent a letter dated September 6, 1976, to the Adviser asking for detention of Khodi Das Patel and alleging that his case had not been considered seriously by the authorities. The order of the Governor dated November 17, 1976, reads, "... Shri Khodi Das Patel may be put under MISA. I understand that he is a RSS worker".

19.105 In the case of 4 persons of Unjha, District Mehsana, the Governor passed the orders of detention without mentioning any specific grounds. The following extract from the note of Under Secretary, Home, dated January 5, 1977, reveals the facts and circumstances of the case :

"The following four persons of Unjha, District Mehsana were ordered to be detained under MISA under orders passed by the Governor on 12th July 1976, with a view to preventing them from acting in

a manner prejudicial to the maintenance of public order :—

1. Shri Narain Lallubhai Patel,
2. Shri Anant Mulshankar Raval,
3. Shri Kantilal Ambalal Patel,
4. Prof. Indravadan Shukla.

There was no material on papers with us in support of the orders of detention passed against all these four persons on 15th July 1976. On receipt of representation from Prof. Indravadan Shukla and his wife, the report of the District Magistrate, Mehsana was called for, who intimated *vide* his letter dated 4th August 1976 that the police records do not reveal anything about the criminal or political activities of Prof. Indravadan Shukla. The DM further intimated that Prof. Indravadan Shukla had not taken any part in activities against the emergency nor had taken part in the activities of any political party. The DM had therefore recommended his release from detention. This report was submitted to the Governor on 6th August 1976, who had ordered continuance of detention *vide* orders at page 9/N. The papers were thereafter again called by the Governor's office and the Governor had ordered release of the detenu on one month's parole on 24th August 1976. In the meantime the Government of India, Ministry of Home Affairs, New Delhi, *vide* their letter dated 7th September 1976 sent a copy of the letter dated 25th August 1976, from Shri P. M. Joshi, MP addressed to Shri Om Mehta, Minister of State for Home Affairs, Govt. of India, New Delhi, requesting the State Government to intimate full facts relating to the issue of warrants under MISA against above-named four persons. Shri P. M. Joshi, MP in his letter to Shri Om Mehta stated that he had been informed that Shri Shankarlal Guru an ex-MLA of the place had made certain allegations against above-named persons to the effect that they were the people who disturbed the meeting of the Prime Minister when she went to Unjha during the last Assembly Election in Gujarat. Shri Joshi further mentioned in his letter that the real reason was that there was one Unjha Education Trust which runs a few colleges there, that the three persons who are trustees and Shri Shukla who is also Professor made it difficult for Shri Shankarlal Guru to get hold of the Trust and that in order to remove them from the whole show he had mis-informed the authorities in this case. As stated above, there was no material available on file with us in support of the orders passed by the Governor for the detention of the above four persons. It was, therefore, difficult to decide whether

the detention of these four persons ordered by the Governor was at the instance of ex-MLA Shri Shankarlal Guru. It may, however, be mentioned that Shri Shankarlal Guru, by chance, happened to meet the Home Secretary at the Bungalow of the Chief Minister (Designate) on 24th December 1976 when he had given two photostat copies of letters to the Secretary. One of the two photostat copies related to a letter written by one Shri Mukesh to one Shri Kantibhai from Baroda Jail and the other one was a press matter issued by Mantri, Jan Sangh Patan, Mandal in May 1975. These photostat copies have been sent to DIG, CID (Int.) for enquiry and submitting a report. It is, therefore, not unlikely that these detentions might have been ordered by the Governor on the basis of certain material that might have been furnished by Shri Shankarlal Guru to the Governor. Since there was no material with us to give a suitable reply to the Government of India to the letter at page 103/c, the papers were sent to the Secretary to the Governor to enlighten the Department about the grounds of detentions of four persons to enable the Department to furnish a reply to the Government of India. The papers, however, remained there till they were called back for considering further action, on 22nd December 1976."

The note of the Under Secretary further states :

"The Government of India have sent a D.O. letter dated 15th December 1976 stating that it is not unlikely that the detenu might have been detained due to differences with some local political leader who might have prevailed with administration to detain Professor Shukla and others. The Government of India, therefore, desired the State Government to make enquiries to ascertain whether there had been any misuse of power in this case and to inform them of the position in due course. As mentioned above, the orders to detain Professor Shukla and others were passed under the orders of Governor. The question of getting any enquiries made with a view to ascertaining whether there had been any misuse of power does not therefore arise. The DIG, CID (Int) was informally asked to furnish details of objectionable activities indulged in by these four persons of Unjha and accordingly the DIG, CID (Int) has given a note showing the activities of these four persons to the Secretary on 30th December 1976 (P. 155/c)".

The Additional Chief Secretary, made the following recommendation on this note which was accepted by the then State Minister for Home :

"The detentions were made under the orders of the Governor who must have

the material before him. We do not have access to the material. As such, we can make no comment nor are we competent to make any inquiry into the matter.

2. The letter from the GOI at P. 153/c has been sent to us at the level of Under Secretary on 14th December. In the circumstances, I suggest we may send no reply to the Government of India at this stage. If any reminder comes, we shall consider the matter at that time.

Sd/-

K. SIVARAJ,
A.C.S. (H). 29/1.

Sd/-

J. MEHTA,
M(H).31/1."

The detention order of Professor Shukla, had, however, been revoked earlier on December 15, 1976.

19.106 In the case of Shri Lallubhai Sheth also, the Governor passed the following order of detention :

"Shri Lallubhai Sheth of Saverkundla is carrying on activities against emergency and national unity. It is necessary that he may be detained under MISA. Secretary (H.D.) may therefore take immediate action in this regard (30-8-1976)."

his detention order was issued by the State Government on August 31, 1976.

19.107 26 students, 33 teachers and 12 journalists were detained under MISA during the emergency. In the case of students, grounds of detention related mostly to their participation in Nav Nirman agitation in Gujarat in the year 1974 and in many cases, no recent activity of the person concerned was mentioned in the grounds. Shri Hemchandra Bechare of District Baroda was detained on March 13, 1976 on the ground that in 1973, he took active part in Nav Nirman agitation and was also a worker of Jan Sangh. After the fall of Janata Morcha Government, he was bound to resort to more violent activities. Shri Prakash Preshthala of District Rajkot was detained on March 15, 1976 on the ground that he had taken part in students' agitations in the past. On February 5, 1976, he along with other students went to the Vice-Chancellor to demand change in the education system. Shri Akshay Maganlal Desai of District Baroda was detained on March 13, 1976 on a single report of a Police Inspector, endorsed by the Deputy SP mentioning that he was one of the organisers of the students' Action Committee, and had taken active part in the Nav Nirman agitation in 1974. After

State elections in 1975, he had been quiet. Even though he had not indulged in any disorderly conduct so far, he was bound to organise agitational activities now, as he belonged to BJS.

19.108 Some journalists were detained on the ground that they had been opposing the police and local administration in the past. In the case of Arvind Chamanlal Bhatt of District Sabarkantha, case history sent by police referred to some police Roznamcha reports, lodged against him between 1965 and 1974. In these reports there were general references that he was a mischievous person, opposed to the police and had tried to influence Government servants. On February 21, 1976, he had misbehaved with the Deputy Chairman of Himat Nagar District Panchayat. His detention was confirmed but later, on his application for grant of parole, the Home Secretary put up a note on August 13, 1976 stating, "It will indeed be a serious matter if on these flimsy matters one is being detained under MISA. In my submission, this is a clear case of taking vendetta against a man who is a Press correspondent and who has perhaps been too critical of the local officials, particularly, police". He was released on 2 months' parole and the DM was asked to send a special report about his activities after 1½ months. But no such report was sent by the DM. The Home Department noted on December 20, 1976 :

"The DM did not submit a special report about the detenu's conduct but sent a report for continuing the detention This appears to be a case of misuse of powers. The question for consideration is whether an inquiry should be made as to who is responsible for the misuse of power."

But no inquiry was ordered and the District Magistrate was asked only to be careful in future. However, recommendation for revocation of the detention was sent to the Central Government, which was approved.

19.109 According to information given by the State Government in reply to Commission's questionnaire on detentions, 15 Government servants were detained under MISA mostly on the ground of prejudicial activities or being anti-socials. There were no detentions on grounds of corruption or opposition to family planning.

19.110 With regard to banned organisations, it was seen that persons were detained mostly on a general police report stating that they were connected with the RSS but no specific activity either present or past was mentioned. In several cases, a combined general report against 20 persons or more was sent by the police giving brief notes in respect of each of them which also did not reveal any specific prejudicial activity except the fact that they were sympathisers or members of the RSS. In District Mehsana, a combined report was sent by the Deputy SP proposing detention of 31 persons alleged to be

associated with the RSS and BJS. The ground mentioned in respect of some of them were: Shri Keshubhai Patel of Kadi : "He is a BJS worker and sympathiser of RSS. Interested in all activities that may oppose emergency". Shri Ramesh Chandra Agrawal, "He wields good influence amongst students and is also interested in creating students' unrest". In the case of Shri Keshav Lal Bir Chand Khara of District Amreli, the grounds only mentioned that he was spreading rumours and instigating his supporters to do objectionable acts but no specific activity was mentioned nor was it specified as to what rumours he had spread.

19.111 Quite a large number of persons was detained under the category of criminals and anti-socials comprising prohibition offenders, bootleggers and persons involved in ordinary offences like theft, assault, quarrelling, etc. In several cases even though the police enclosed a list of offences in which the detenus were said to be involved in the past, very few convictions were shown. In the case of Shri Koli Duda Bhima of District Junagarh, detained on July 2, 1976, the criminal offences referred to in the grounds of his detention pertained to the years 1968, 1972, 1974 and 1975, but only in one case under Bombay Police Act, he was shown to have been convicted. Shri Merganga Hathi of District Junagarh was detained on September 29, 1976, but only one criminal offence under section 332 IPC of the year 1974 and one pending criminal case, were mentioned in the grounds.

19.112 MISA was used freely against prohibition offenders. In the case of Shri Jagulaxman of District Ahmedabad, detained on September 6, 1976, on the grounds of "bootlegging activity", the Under Secretary, Home, put up a note stating that in view of the recent instructions of Government of India, it may be considered whether declaration should be confirmed or not. The detention was confirmed by the State Government.

19.113 In Ahmedabad, a number of persons involved in ordinary criminal offences 5 to 15 years before the emergency, were detained under MISA and the only recent criminal activity mentioned in the grounds related to one or two incidents of assault on some persons in the bazar a few days before the date of detention. It is significant to note that no report of such incidents or assault was lodged with the police. The State Home Department also noted in many of these cases, that not such reliance should be placed on these incidents of 1976. In the case of Hiru Hira, District Ahmedabad, detained on June 14, 1976, several convictions for petty offences between the years 1932 to 1964 were mentioned in the grounds and two incidents of committing robbery in the bazar with Rampuri knife on June 11, 1976, and June 12, 1976, were mentioned. The State Home Department noted, "Offences are very old and not such reliance should be placed on incidents of 1976". But the detention was confirmed. In the case of Shri Yusaf Gul Pathan, several offences between the years 1951 and 1967 were mentioned in the grounds and thereafter two incidents robbing persons in the bazar in 1976 were cited.

19.114 In review of the detention cases, the procedure followed in the Home Department was that the cases were put up to the Home Minister at the time of Janata Government rule and to the Adviser during the President's rule, for final orders. No separate Review Committee was formed to consider review cases. However, no reasons are found to have been given in the files before the issue of release orders.

19.115 In grant of parole to MISA detenus, no clear-cut procedure was laid down in the beginning. During the early month of emergency, the cases for granting parole were put up to the Home Secretary, who, in most cases, passed the final orders. However, some cases went up to the Adviser also. Later on, due to rush of work, the Under Secretary, Home, was given authority to grant parole up to a period of seven days and Deputy Secretary, Home, dealt with the requests for longer periods.

19.116 The following extracts from the reply of the State Government to the Commission's questionnaire on detentions would explain the policy regarding the grant of parole to students, teachers, office bearers of municipal bodies :

"Government considered the cases of parole to MISA detenus on merit of each case, usually in the following circumstances :—

- (a) Detenu's own sickness or any members of their families including such cases in which they are required to undergo surgical treatment;
- (b) *bona fide* students to enable them to prosecute their studies;
- (c) to teachers and professors on the lines of the students;
- (d) on compelling grounds, such as, marriage of daughter or any other dependent of a detenu; death of a nearest relative, etc.

The policy adopted by Government to decide the requests for parole to the above category of detenus is as follows :—

Students : It was decided to grant long parole on selective basis up to a period of 3 months to genuine students initially for 7 days for admission and subsequently for the remaining period for prosecution of their studies.

Teachers and Professors : Some teachers had requested for grant of parole to enable them to attend the colleges/schools on the opening day of the new term after vacation so that they do not lose the vacation pay and there is no break in their service. This was agreed to. (It was also decided to grant long parole to professors and teachers after considering such cases on merits.)

Parole to office bearers, such as, Deputy Mayors, Chairmen of Committees and others of the local bodies:

On 17th March, 1976, Government had decided to grant parole for the minimum number of 2 to 3 days only to enable them to attend the meetings of the Committees and General Board. This policy was modified on 8th May, 1976 and it was decided not to grant parole to Members of the Committees to attend the meetings of such boards, but it was decided to grant parole only for elections within civic bodies. On 6th September, 1976, this policy was again modified *vide* note dated 6th September, 1976, which was approved by the Government. It was decided accordingly as per informal advice from the Government of India that security prisoners were not released elsewhere in the country for the stated purpose. Government, therefore, decided not to grant parole to the security prisoners of this category either to attend the meetings or for election purpose within the Civil Bodies."

19.117 In some cases, parole was granted directly by the Home Minister on applications presented to him and in many such cases the grounds on which parole was requested were not such as were normally regarded as acceptable. Shri Deva Arjan of District Junagadh was granted parole for one month by the Home Minister on an application by detenu's wife stating that they had 40 bighas of land and agricultural operations were being hampered due to the detention of her husband. Similarly, Shri Arjanji Gigaji Mer of Junagadh was granted parole for one month on an application by his father stating that his son was running a shop of oil engine and spare parts and due to his detention the business was suffering and the family was in trouble. In many cases, requests for parole on apparently stronger reasons were refused, as the applications were processed through the Home Department. Shri Natha China of District Bhuj was refused parole for attending to his wife, who had recently gone through a delivery. This was done on the basis of DM's report that she had two sisters, who could look after her. Shri Bachubha Bhojubha of district Rajkot was refused parole on the death of his grandmother on the ground that his father was available for her last rites.

19.118 There were a few cases in which delays in getting the parole applications or verification reports from district authorities or delays in Home Department resulted in denial of parole to the detenus concerned. Shri Arsi Munja of Junagadh applied for parole on July 26, 1976 stating that his brother had died on July 25, 1976. On the same day, the Jail Superintendent reported the matter to the Home Department by a telegram, which was received in the Department on July 27, 1976. But the Home Department put up the case on August 7, 1976, and on the same day request for parole was rejected on the ground that the period of 13 days after the death of the detenu's brother was over.

19.119 Shri Moolraj Popatlal Lohana of Junagadh, applied for parole on October 5, 1976, for appearing in the SSC examination starting from October 10, 1976. The application was received in the State Secretariat, Central Receipt Section, on October 7, 1976; but it took 9 days for it to reach the dealing section of Home Department, where it is shown to have been received on October 16, 1976. On October 18, 1976, the Under Secretary rejected the request for parole on the ground that the date of examination had already passed.

HARYANA

19.120 According to the information supplied by the State Government to the Commission's Questionnaire, the figures of arrests and detentions made in Haryana during the period of the Emergency are :

MISA	200
COFEPOSA	2
DISIR	1079

The break-up of these detention figures, as revealed from the statement obtained from the Ministry of Home Affairs, is as follows :—

Members of banned organisations	24
Members of political parties & others	172
Economic offenders and anti-socials	4
Total :	200

It may thus be seen that an overwhelming majority of persons detained under MISA during this period in Haryana belonged to various political parties.

19.121 Following the proclamation of the emergency by the President of India on June 25, 1975, a wireless message No. 6216/HS/75 dated June 26, 1975, was received by the State Government from the Union Home Secretary, New Delhi, in which directions were given to the State Government to "enforce internal security scheme with immediate effect and take steps to maintain law and order at all costs". The State Governments were also instructed to "prevent any form of agitation likely to lead to violence"; and resort to preventive arrests to the extent necessary for this purpose. This message was repeated by the Home Department of the State Government to the Commissioners and DIsG, Ambala and Hissar, to all the District Magistrates and SSPs in Haryana for strict compliance. But, even prior to receipt of these instructions, operations had been launched on the night of June 25/26, 1975, itself by the State Government to detain a number of persons. Shri S. K. Misra, Principal Secretary to the Chief Minister, Shri Bansi Lal, has stated before the Commission that between 12 to 2 p.m. on June 25, 1975, he had received instruction directly from Shri Bansi Lal, Chief Minister (camping at Delhi) to ask Shri Banar Singh, ADIG, CID, Haryana to draw up a list of persons "whose activities could be considered prejudicial to the

'maintenance of law and order in the State'. Accordingly, Shri Banar Singh prepared a list of about 70 persons and passed it on to Shri Misra, the same evening. On the same night (of June 25, 1975), a meeting was held at the residence of the Chief Minister, which was attended by Shri B. D. Gupta, the then Minister for Irrigation and Power; Shri S. D. Bhambri, Chief Secretary; Shri S. S. Bajwa, IGP and Shri S. K. Misra. In the meeting IGP reportedly received instruction from Shri Bansi Lal to note down a list of about 40 persons to be arrested before day-break and transmit those names immediately to DCs and SPs for further action. On the same night, IGP issued necessary telephonic direction to the District Magistrates and SPs, and the first place of detentions under MISA during the emergency in Haryana commenced.

19.122 Careful scrutiny of a number of MISA detentions files reveals that in many cases, the grounds of detentions were inadequate and vague and it seems that detention orders were presumably passed because of extraneous considerations. In some cases Deputy Commissioners and Superintendents of Police have clearly admitted that they received directions from above, either from the Chief Minister or from DIG, CID or IGP, to effect arrests of particular persons and then prepare grounds to bring them under the mischief of the MISA provisions. It appears that in quite a few cases, the detaining authority i.e. the District Magistrate, perhaps acted on the satisfaction of somebody else while issuing the detention orders though under the MISA, the subjective satisfaction of the detaining authority is the first and foremost requirement for issuing a detention order against a person. Some cases also give rise to the legitimate feeling that the district authorities were trying to take the easier course of action under MISA because they did not want to take the trouble of elaborate action required for launching criminal prosecution. MISA was blatantly misused in a number of cases to settle old scores.

19.123 Under the provisions of section 16-A of the Maintenance of Internal Security Act, which was added to the Principal Act by the Maintenance of the Internal Security Amendments Ordinance 1975, statutory obligation was cast on the State Government to review and confirm within 15 days every case of detention under MISA. If the State Government was satisfied as to the necessity of the detentions, it had to issue a confirmatory order. When the reports of detention are sent to the State Government for confirmation, the order of confirmation by the State Government should be a considered order; and in cases where the State Government feels that the detention was not justified, the confirmation should be refused and the district authorities called upon to explain. It is seen that in some of the cases, MISA detention orders have been almost mechanically confirmed by the State Government without probing into the veracity or adequacy of the grounds of detentions. Only in 5 cases out of nearly 200, the orders passed by the District Magistrates were not confirmed by the State Government. From a scrutiny of a number of MHA

files concerning MISA detention cases of Haryana, it is seen that that the Ministry of Home Affairs in quite a few cases asked for the comments of the Central Intelligence Bureau on the validity of the MISA detentions ordered by the State Government. In a number of cases, the Intelligence Bureau have clearly pointed out that the grounds of detention under MISA lack substance and motivated by personal and political animosity.

19.124 It is interesting to note that MISA detentions in Haryana prior to June 29, 1975, eventually necessitated promulgation of the 4th MISA Amendment Ordinance dated November 16, 1975. From the MHA file No. 15015/212/75-MISA, it is seen that a legal complication arose with regard to the arrests effected by the Haryana Government before June 29, 1975, i.e. before the amended section 16-A of the MISA came into force. The then Attorney General of India, Shri Niren De, sent a note to MHA in which he pointed out :

"Officers under the Haryana Government originally made a large number of detention orders on a date or dates prior to 29th June, 1975, being the date on which the first MISA Ordinance came into effect. But these officers did not send the report to the State Government under section 3(3) within the period mentioned in that sub-section, with the result that the detention orders expired. After 29th June, 1975, the Haryana Government revoked the said detention orders and made fresh detention orders in respect of the persons who were detained under the earlier detention orders. I have been informed that the hearing of the High Court in respect of some of these matters are going on and the High Court has observed, quite correctly, that there can be no application of section 14(2) of the MISA, as it now stands, because there cannot be a revocation of any detention order which had ceased to have any effect for non-compliance with section 3(3) of MISA, because such detention orders had already expired before such purported revocation and the High Court has further observed that the fresh detention orders made by the Haryana Government after such revocation, and based on the old grounds, cannot be sustained. I have also been informed that there is a large number of such fresh detention orders by the Haryana Government".

19.125 On the basis of the above opinion of the Attorney General, sub-section 2 of section 14 of the MISA was amended and replaced by a new sub-section (2) vide 4th Amendment Ordinance issued on November 16, 1975. The new sub-section (2) of section 14 reads as follows :—

"The expiry or revocation of a detention order (hereafter in this sub-section referred

to as the earlier detention order) shall not bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under section 3 against the same person".

19.126 The State Government has informed the Commission that a large number of MISA detenus sent representations to the State Government from time to time alleging that their detentions were either 'mala fide' or 'acts of political vendetta'. A Committee, under the Chairmanship of the Chief Minister, with Chief Secretary, Home Secretary, Legal Remembrancer, IGP, DIG, CID, and Deputy Director, SIB, was constituted to consider the representations from persons detained under MISA. But this Committee, according to the State Government, actually existed in name. No complaints of the MISA detenus were considered by this Committee.

19.127 Parole : The State Government had no clearcut policy in the matter of granting parole to the MISA detenus. All requests of MISA detenus or their relatives were considered at the Government level on the basis of material supplied by the Inspector General of Police and the orders for granting parole were always passed at the level of the Chief Minister. It has been reported that no instructions or guidelines had been issued by the Government either to the Inspector General of Police or to the District Officers. In about 20 cases, parole was denied to the detenus simply because their applications were forwarded to the Delhi Administration from where no orders had been received. Thus, their cases went unattended because of the default on the part of the Delhi Administration. Scrutiny of the statistics supplied by the Haryana Government on the parole cases revealed that at least in respect of 54 cases, the requests for parole were not granted. Out of these 54 cases, as per statements supplied by the State Government, in 10 cases the concerned detenus requested for release on parole due to the deaths of their family members; in 15 cases for marriages of the dependents and in 29 cases due to serious sickness of the family members. During the course of enquiry, it could also be seen that in some cases that the District Magistrates had to incur the wrath of the Chief Minister for reportedly showing a sympathetic attitude towards the detenus. Shri Lachman Singh, a MISA detenu, lodged in Ambala Jail, requested for parole to enable him to attend the marriage ceremony of his daughter which was to take place on August 23/24, 1975. The Superintendent, Central Jail, Ambala, forwarded his application to the then DC Ambala Shri K. K. Sharma on August 19, 1975, by post. Since the DC had no power to grant or refuse the request for release on parole, he forwarded the application in original to the State Government through a special messenger on the very same day. The State Government, however, did not convey any decision on this application. The Chief Minister Shri Bansi Lal, on the other hand, reportedly became annoyed because of the interest taken by the DC in forwarding the

application. In his statement, Shri K. K. Sharma says that—

"On 19-11-1975, I happened to meet the Principal Secretary to the CM. He told me that CM was highly annoyed with me for forwarding Shri Lachhman Singh's parole application. According to him, the CM thought that I had shown over-zealousness in the matter and that perhaps I was politically involved. . . . A few days after this, I received from the Govt. a letter transferring me as Joint Secretary (Finance) with immediate effect. Around the same time, the Superintendent of Ambala Central Jail, who was near retirement, was also placed under suspension. Soon after receiving the orders of transfer, I met the Chief Minister in Chandigarh. . . . The CM replied that he had since then made his verification in that regard and that he was satisfied. But he still held that I made an error of judgment in forwarding the parole application through a special messenger. What he clearly implied was that if the application had been sent by post, it would have died a natural death and the CM would have been spared the embarrassment of having to detain the file in order to frustrate the request of the detenu".

HIMACHAL PRADESH

19.128 According to the information supplied by the State Government to the Commission, the total number of arrests and detentions made in Himachal Pradesh during the period of Emergency are—

MISA	34
COFEPOSA	NIL
DISIR	654

19.129 Categorywise break-up of the MISA cases is given below :—

(i) Members or Associates of Banned Organisations	8 (All of RSS)
(ii) Members or Associates of Political Parties	17
(iii) Others	9

The third category includes 5 persons belonging to Lok Raj Parishad, 2 leaders of Laghu Jamidar Sabha, Kangra, 1 anti-social element and one economic offender.

19.130 Among the political parties maximum number of detentions (6) were from amongst the followers of BJS.

19.131 26 out of 34 persons were detained during the period between June 26, 1975 and

June 30, 1975. These detentions were made in the wake of the proclamation of Emergency. A scrutiny has revealed that grounds of detention in all these cases referred to specific incidents signifying the opposition of the persons concerned to the imposition of Emergency and continuance of Smt. Gandhi in power despite the judgment of the Allahabad High Court setting aside her election to Parliament in 1971. Ten persons were detained during this period under the orders of Shri Ajay Prasad, the then District Magistrate, Simla. The State Government has reported in reply to the Commission's questionnaire that the District Magistrate had discussed the list of these persons with the Chief Minister on the evening of June 26, 1975, and the latter had ordered their detention. After the amendment of MISA, the State Government reviewed all the 26 detention orders issued till then in accordance with the new provisions of the Act and 11 of them were revoked as a result of this review. Two detention orders issued by the District Magistrate under the amended provisions of MISA were not confirmed by the State Government. Thus, in all 13 out of 34 orders of detention were either revoked or not confirmed by the State Government leaving 21 persons who remained in detention beyond the initial period of 15 days.

19.132 The State Government issued instructions *vide* their wireless message PS/CM/75-Misc (Home) dated July 5, 1975, to all the District Magistrates to the effect that "no arrests under MISA shall be made without the prior approval of the Chief Secretary". These instructions issued presumably to safeguard against the misuse of powers under MISA by the District authorities appear to have produced the desired effect. Only 6 persons were detained in Himachal Pradesh after the issue of these instructions, 5 of them under the orders of the State Government and only one by a District Magistrate. No detention under MISA was ordered in Himachal Pradesh after December 18, 1975.

19.133 The following cases are noteworthy :—

- (i) Shri Romesh Kishore Bansal was detained under the orders of DM Sirmur issued on July 4, 1975, on the following grounds :—

"Shri Romesh Kishore Bansal is the Sangh Sanchalak of RSS in Sirmur District. The Central Government banned the RSS on 3rd July, 1975, along with certain other anti-social, extremist parties in interest of Maintenance of internal Security. The said Shri Romesh Bansal is considered to be a security risk in view of his close connection with the banned organisation and he was, therefore, ordered to be detained."

The case was reviewed by the Government on July 9, 1975, and it was not found fit for confirmation. The order was, accordingly, revoked on July 10, 1975.

- (ii) Shri Kishore Lal of M/s. Kishori Lal Jagat Ram, Subzi Mandi, Simla, was detained

under the orders of DM Simla dated July 21, 1975, on the following grounds :—

"1. That on the night of 19th July, 1975, at about 8.30 p.m. Shri Kishori Lal along with his associates decided not to carry out the suggestions of the Government regarding reduction in prices of vegetables. He said that all controls must be lifted immediately on prices and they further said that they had been trying to defeat these controls by various measures since the imposition of the Emergency but had failed to achieve their objective directly. They decided that they would now instigate the growers to bring pressure on the Government to get these restrictions removed.

2. In pursuance of this decision Shri Kishori Lal on the morning of 20th July, 1975, deliberately disobeyed the instructions and also incited the growers and dealers present to do the same. As a result, great inconvenience to public was caused and supply of vegetables seriously affected. Shri Kishori Lal also met various growers and told them to bring pressure upon the Government to get these restrictions withdrawn.

In the circumstances, he tried to create dis-affection among the various sections of society towards the Government established by law in India."

The case was reviewed by the Government and the order was revoked on July 30, 1975.

19.134 Eight detention orders were issued after the amendment of the Act. Each of these detention orders was required to be accompanied by a declaration issued simultaneously by the detaining authority to the effect that the detention of the person concerned was necessary for dealing effectively with the Emergency. Five of these orders were issued by the State Government and only three by the District Magistrates. While the orders issued by the State Government were accompanied by a declaration u/s 16A in each case, the orders issued by the District Magistrates were without the said declaration. The State Government reviewed all the three detentions ordered by the District Magistrates within the statutory period of 15 days, revoked two of them and issued the declaration u/s 16A in respect of the third detention order, which was found fit for confirmations in the context of the Emergency. It can thus be seen that the requirements of the Act that the detention order under the amended MISA must be accompanied by a declaration under section 16A issued simultaneously by the detaining authority, was not satisfied in these cases.

19.135 The State Government has reported that the MISA cases were reviewed from time to time in accordance with the provisions of the Act, by a State level Committee consisting of the Chief Minister, the Chief Secretary, Secretary (Law), IGP, DIG, CID, and Joint Secretary (Home). It stands to the credit of the Government of Himachal Pradesh that even the first review required for the purpose of confirmation of a detention order issued by a District

Magistrate used to be conducted by this Committee. It was as a result of the initial review, carried out by this Committee that as many as 13 orders were revoked within 15 days of the detention order.

19.136 Four-monthly reviews were conducted within the statutory period and necessity of continued detention of the detenu concerned was considered in the light of the recommendations of the detaining authority and the DIG, CID. The Review Committee held six meetings during the period from July 9, 1975 to February 23, 1977. In the review of MISA cases conducted on October 5, 1976, it was decided to revoke detention orders in respect of Shri Sant Ram Sant of Lok Raj Party and Shri Ramdas Dhiman and Shri Brij Mohan Lala of RSS. A letter was written to the Government of India on November 22, 1976, for obtaining their approval for the revocation of these orders. The Government of India accorded approval for the release of Shri Sant Ram Sant and Shri Ramdas Dhiman on December 3, 1976 and their detention orders were revoked on December 18, 1976. Approval for the release of Shri BM Lala was received on December 24, 1976 and he was released on January 5, 1977. In the Review Committee meeting of February 23, 1977 the cases of all the detenues then under detention were examined to consider the necessity of their continued detention. S/Shri Nand Lal, Ramdas Thakur and Krishan Chand, all of RSS, were released on March 5, 1977, as a result of this review.

19.137 The representations received from or on behalf of the detenus for their release were considered by the State level Committee after getting reports from the District Magistrate and the DIG, CID. Shri Tilak Raj Sharma of Congress (O) and Shri Durga Chand of BJS were released as a result of consideration of their representations. Shri Tilak Raj Sharma was detained on June 26, 1975 for his alleged participation in the anti-Emergency meeting held at the CTO, Simla on June 26, 1975. He sent a petition on July 7, 1975 contending that he was not a member of any political party and had never indulged in any activities against the Government. He declared his support to the 20 Point Programme of Smt. Indira Gandhi and requested for his release from detention. DIG, CID and DM Simla were asked to send their comments on the petition of Shri Tilak Raj Sharma. District Magistrate, Simla, who had issued the detention order, wrote on July 28, 1975 that "On inquiries made it appears that by and large what has been stated in his representation is true and in case the Government desires to review the orders, perhaps, there will not be any harm in it." DIG, CID sent his comments on August 1, 1975. While confirming that Shri Sharma was a Congress (O) worker, who had actively participated in the opposition rally of June 26, 1975, the DIG, CID mentioned that though Shri Sharma was seen on a number of times participating in BJS meetings and rallies, his background did not indicate that he was a whole-time or dedicated worker of this organisation. The case was reviewed in the Home Department in the light of the reports from DM, Simla and DIG, CID and the detention order was revoked on August 20, 1975. Another detenu Shri Durga Chand of BJS

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detained on May 26, 1975, sent a petition on December 31, 1975, saying that he was suffering from piles and assured the Government that he would not indulge in any prejudicial activities in future. DIG, CID made the following recommendations :—

"Shri Durga Chand, MLA, according to secret information received, has been evincing softness in his attitude. It is, therefore, recommended that the Government may consider his release."

Shri Durga Chand was released on April 21, 1976, after obtaining the approval from the Government of India.

19.138 Of 21 MISA detenus, whose detention beyond 15 days was confirmed by the State Government, two were released on the basis of their representations, six were released on the basis of four monthly reviews and 10 were released in January 1977 under the directions of the Central Government. One detenu named Shri Vidya Sagar Joshi had died while in detention in August 1976 and, as such, there were only two persons under detention on March 21, 1977, when the Emergency was lifted and their orders were revoked.

19.139 *Parole* : Scrutiny of parole cases has revealed that the State Government had followed a liberal policy regarding the temporary release of MISA detenus on health grounds or to enable them to fulfil their genuine social and family obligations. Of the 21 detenus, who remained under detention beyond 15 days, 18 were granted parole on more than one occasion, some of them on as many as 5 times. Even the detenus belonging to the RSS were granted parole liberally whenever their requests were found to be genuine. Applications for grant of parole were processed in the Home Department in the light of the recommendations of the DM concerned and the DIG, CID and parole was refused very rarely. This will become clear from the following examples :—

- (i) Shri Narottam Dutta Shastri of Lok Raj Party detained on June 27, 1975, was granted parole from August 8, 1976 to August 18, 1976 and from September 1, 1976 to September 10, 1976 to enable him to look after his ailing brother-in-law. He was again released on parole for one month in January 1977 to make arrangements for the marriage of his daughter.
- (ii) Shri Rajender Kumar Handa of Chhatra Sangharsh Samiti was released from April 14, 1976 to April 18, 1976 to enable him to attend his sister's wedding. He was released on parole again in October 1976, December 1976 and January 1977 on medical grounds.
- (iii) Shri Ramdas Dhiman of RSS, detained on October 18, 1975, was granted parole 8 times on the ground of illness of his son. Total duration of parole was over 5 months in this case.
- (iv) Shri Shanta Kumar of BJS detained on June 27, 1975 was granted parole three times

first on the ground of illness of his son and later to enable him to look after his business problems. He was also allowed to visit Amritsar, Jullundur, Delhi and Ambala during the period of parole in connection with business affairs.

19.140 The following parole cases are found noteworthy :—

- (i) Shri Daulat Ram Sankhyan, a Congress (O) leader, was detained on June 26, 1975. He applied on October 18, 1975 for grant of parole to enable him to attend the fourth death anniversary of his son. The matter was referred to the Central Government for advice on October 23, 1975. The MHA sent a signal on October 28, 1975 advising the State Government that "the detenu may not be released on parole but may be taken out in custody and permitted to attend ceremonies on November 2 and 3, 1975 and brought back to jail on completion of ceremonies". The action was taken accordingly. However, Shri Daulat Ram was released on parole on medical grounds from August 28, 1976 to September 27, 1976 by the State Government.
- (ii) Shri Narayan, an alleged RSS worker, was detained on October 15, 1975. A representation was received from his nephew on January 17, 1977 requesting for the release of Shri Narayan Swami on parole. Since no request for parole had ever been received from Shri Narayan Swami till then, he was contacted to find out whether he was willing to be released on parole. It is seen from the file that he refused to go on parole. However, he was granted 15 days parole on February 16, 1977 and it was extended until the order was revoked on March 21, 1977.
- (iii) Shri Durga Singh Rathore of Congress (O) was detained on June 26, 1975. He requested for grant of parole on February 9, 1976 on medical grounds. File shows that he was suffering from pain in stomach and urinary bleeding since July, 1975. The report of the District Magistrate Nahan dated February 25, 1976 confirmed the detenu's illness which was also certified by the Medical Officer. However, Shri Rathore was not released on parole but was instead got admitted to the State Hospital Snowdon, Simla, for treatment in March 1976. He sent another petition on May 23, 1976, requesting for grant of parole on the ground that the allopathic treatment did not suit him and he wanted to be treated by an Ayurvedic or Homoeopathic doctor. This was followed by series of applications on May 25, 1976, June 7, 1976, June 14, 1976 and July 27, 1976. His application of July 27, 1976 shows that he was then suffering from tuberculosis in Kidneys with various other complications. District Magistrate, Simla and DIG, CID were asked on August 4, 1976 to send their comments. Shri Durga

Singh Rathore sent another petition on August 17, 1976 requesting the authorities to keep him under house arrest if he could not be granted parole. File shows a report dated August 8, 1976 from the Director-Principal, Himachal Pradesh Medical College, Simla, saying that Shri Rathore was undergoing antitubercular therapy. DIG, CID wrote to the Home Department on August 25, 1976 saying that the detenu's treatment was continuing and parole was not recommended in view of no change of his anti-Government postures. However, the Government issued orders for releasing Shri Rathore for one month with effect from August 28, 1976. It is seen from the file that he refused to avail of parole as he was then undergoing treatment in the Snowdon Hospital, Simla. He was granted parole for one month from December 14, 1976, also but did not avail of the same.

KARNATAKA

19.141 According to the information supplied by the State Government in replies to the Commission's questionnaire, the figures of arrests and detentions in Karnataka during the period of emergency are :

MISA	487
COFEPOSA	119
DISIR	4015

19.142 Scrutiny has, however, revealed that MISA warrants in respect of 10 persons could not be executed and as such only 477 persons were detained under MISA. Categorywise break-up of these persons is given below :

(i) Members or Associates of Banned Organisations	165	RSS 129, JEI 20, Anand Marg 9, CPIML 7.
(ii) Members or Associates of Political Parties	156	Congress (O) 15, BJS 124, BLD 1, Socialist Party 8, CPM 1, Others 7.
(iii) Others	156	

The third category includes economic offenders, smugglers, rowdies, gamblers and other anti-social elements.

19.143 It would be seen from the above that the RSS and BJS had to bear the brunt of MISA in Karnataka during the emergency. There were 8 journalists, 4 teachers, 19 students, 18 trade union leaders and 3 women among the detenus. Three Government servants and 15 employees of the corporate bodies/Public Sector Undertakings were also detained under MISA for their alleged association with the banned organisations or participation in anti-emergency activities.

19.144 It has been reported by the State Government that the Chief Minister of Andhra Pradesh had called on Chief Minister of Karnataka in Bangalore on the afternoon of June 25, 1975 and informed him that the emergency was being declared. The general policy decisions and instructions regarding the arrests and detentions of Opposition elements were received from the Government of India on June 26, 1975. Actual detentions under MISA in Karnataka started from July 4, 1975 with the Government of India banning certain political parties and organisations. Till then only 4 persons had been detained under MISA in Karnataka. It has been reported by the State Government that S/Shri Atal Behari Vajpayee, Madhu Dandavate, L.K. Advani and S.N. Mishra were detained at Bangalore on June 26, 1975. The file of the Home Department shows that at about 7.30 a.m. on June 26, 1975, the Chief Secretary, Delhi, telephoned to the Chief Secretary, Karnataka and requested that S/Shri L.K. Advani, A.B. Vajpayee, S.N. Mishra, Madhu Dandavate, Samar Guha and Subramanyam Swamy, who were then in Bangalore, be arrested. The Chief Secretary, Delhi, had mentioned that this had the concurrence of the Prime Minister. This was also confirmed by the Union Home Secretary when the Chief Secretary, Karnataka, contacted him on telephone on the morning of June 26, 1975. In pursuance of these instructions, S/Shri L.K. Advani, A.B. Vajpayee, S.N. Mishra and Madhu Dandavate were detained under MISA on June 26, 1975 under the orders of Shri M.L. Chandrasekhar, the then Commissioner of Police, Bangalore City. Shri M.L. Chandrasekhar has stated before the Commission that the grounds for the detention of these persons were collected from Delhi after the execution of detention orders.

19.145 Some examples of detentions made in Karnataka during the period of the emergency are given below :

- (i) S/Shri Addanda C. Kashi, C.P. Annaiah, C.K. Poovappa and C.P. Kushalappa were detained under the orders dated August 21, 1975 of the District Magistrate, Coorg. Their detentions were based on a report submitted to the District Magistrate by the Circle Inspector of Police, Virajpet Circle, on August 21, 1975. It was mentioned in this report that these persons were active members of the Bharatiya Jan Sangh and were close associates of Shri A.K. Subbaiah, Advocate and MLC, who was then under detention in the Central Jail, Bellary. It was alleged that these persons were creating law and order problems in Virajpet Taluk, condemning the administration in general and Police Department in particular and were trying to create enmity between Hindus and Muslims with the support of the student population. It was also mentioned that these persons were taking part in secret meetings and distributing objectionable pamphlets against the Government. Only one case under sections 143, 147, 148, 323, 353 and 332 IPC involving Shri Addanda C. Kashi, was specifically mentioned in the entire report. When the

case was reviewed in the Home Department the Home Secretary recorded on August 28, 1975, that :

"There is not much evidence to show that the four persons detained by the District Magistrate, Coorg, are active members of the RSS."

The DIG (Intelligence) was consulted and he confirmed on September 1, 1975, that these persons did not appear to be active and no dossiers were kept on them in the State Special Branch. However, detention orders in respect of these 4 persons were confirmed on September 4, 1975. The file shows that the District Magistrate, Coorg had recommended on October 16, 1975, the revocation of detention orders on the ground that further detention of these persons was no longer necessary. The Home Secretary recorded on November 1, 1975, that :

"A perusal of the records shows that even at the time of passing orders for their detention, the grounds were not adequate to justify their detention. It has been reported that Shri Addanda C. Kashi is an active member of the Bharatiya Jan Sangh and that he has been taking active interest in RSS activities. There is no evidence to show that Shri Kashi is a member of any banned organisation. The other three persons viz. S/Shri C. P. Annaiah, C. K. Poovappa and C. P. Kushalappa, are active members of the Bharatiya Jan Sangh. It is not clear from the report dated 22nd August, 1975 whether these three persons are members of any banned organisation. Nowhere has it been stated that these persons are members of any banned organisation and they are only supporters and sympathisers of the RSS. No evidence has been led in about the membership of any banned organisation of these persons. Further, it is stated by the Circle Inspector that they were distributing pamphlets, exhibiting posters, etc. in conspicuous places in Virajpet Taluk. These pamphlets and posters are said to be anti-Government. However, the Police Inspector has not furnished specimen copies of the pamphlets and posters. It would appear that these are cases where Government could exercise their discretion and revoke the detention orders.

The State Government decided to revoke the detention orders and the Government of India was requested on December 8, 1975 to accord approval for the same. The Government of India replied on January 20, 1976, advising the State Government to review these cases once again from the point of view of the likely effect of release of these persons on the agitation launched by the Lok Sangharsh Samiti which, according to the Government of India, was fairly

active in the State of Karnataka. The State Government wrote to the Government of India on August 10, 1976 that the release of these persons was not likely to affect the maintenance of public order. They were released on October 6, 1976 after the Government of India gave the clearance.

- (ii) Shri N. K. Ganapaiah, the lone BLD detenu of Karnataka, was detained under the orders of the District Magistrate, Hassan, issued on July 8, 1975. It was alleged in the grounds of detention that Shri Ganapaiah had circulated letters criticising the emergency and the measures taken by the Government to enforce it. He filed a Writ Petition in the High Court of Karnataka challenging his detention. The file shows that the Government was advised by the Advocate-General to revoke the detention order on the ground that the declaration issued by the District Magistrate, Hassan, was confirmed by the Chief Secretary and not by the Minister concerned. The Home Secretary recorded on October 10, 1975 that there was no delegation permitting the Chief Secretary to confirm the detention and that—

“It would be embarrassing for the Chief Secretary to file the affidavit that the detentions were confirmed by the Minister in-charge after applying his mind.”

The order was, therefore, revoked on October 18, 1975, and fresh order was passed the same day. The file shows that the case was reviewed in September 1976 and the Additional Home Secretary recorded on September 6, 1976, that :

“Shri N. K. Ganapaiah, Convenor of Bharatiya Lok Dal in our State is under detention from July 1975. He is 72 years old and his wife has submitted a petition to the Government requesting for his parole, as she is ailing from kidney trouble. The Bharatiya Lok Dal was not a force to be reckoned with, at any time; the detenu was detained only for writing slogans in pamphlets which he distributed by post. Even if he is released, he will find it difficult to organise prejudicial activities. Even if he does so, provisions of MISA and DISIR can be used against him. We may consider his release.”

The detention order was revoked on October 30, 1976, after obtaining the approval from the Government of India.

- (iii) Shri C. R. Shivananda, former President, Town Municipality, Chikmagalur, was detained under the orders of Shri R. Shankarappa, D.M. Chickmagalur, issued on March 3, 1976, on account of his alleged RSS/BJS leanings. It was alleged that he was not cooperating

in the implementation of the various Government programmes, particularly, in the distribution of sites to the landless. It was mentioned that he was holding in camera meetings to instigate the students against the Government, engineering printing of objectionable and prejudicial literature condemning the Prime Minister of the country and the Chief Minister of Karnataka, using derogatory words and was promoting hatred between different communities and classes. However, enquiries made by the Commission with the special State Branch have revealed that no individual file was being maintained by them on Shri Shivananda. Record shows that the detention was ordered without any report from the police. The detention order was confirmed by the State Government on March 16, 1976. Smt. Kanakamma wife of Shri Shivananda presented a petition to the Chief Minister of Karnataka on June 4, 1976. Shri V. K. Gorey, who had succeeded Shri R. Shankarappa, as D.M. Chickmagalur, was asked to examine the petition and send report to the Government. The Superintendent of Police was asked by the D.M. to offer his comments on the petition. The Superintendent of Police, Chickmagalur, wrote on June 16, 1976, that no anti-emergency activities on the part of Shri Shivananda had been noticed and there was nothing adverse against him in the police records except that he was a Congress (O) leader. Shri V. K. Gorey wrote to the Home Department on June 26, 1976 mentioning that as per the note left by his predecessor, Shri Shivananda was detained because “as President of the Municipality, he was misbehaving with the authorities and was not giving heed to the administrative directions to carry out certain works.” This note of the earlier D.M. Shri R. Shankarappa did not mention that Shri Shivananda was an active member of the banned organisation. Shri Gorey further wrote that Shri Shivananda was a Congress (O) worker, who was no longer in power. In view of the fact that his detention was ordered without any report from the police and the Superintendent of Police, Chickmagalur, had reported that Shri Shivananda was not noticed for any anti-emergency activities, Shri Gorey recommended to the Home Department to revoke the detention order of Shri Shivananda agreed to give an undertaking that he would resign the membership of the Municipality and not enter into politics for a period of five years. The detention order was revoked on January 5, 1977, after obtaining the approval of the Government of India. In response to a notice under section 8B of the Commissions of Inquiry Act and a summons under section 5(2)(a) of the Commissions of Inquiry Rules, Shri R. Shankarappa stated before the Commission that though he had issued the detention order without any report from the police, it was based on sufficient grounds ascertained by him through his own

sources. This case has been referred by the Commission to the Karnataka State Authority for detailed examination.

- (iv) Shri Rama Jois, formerly an Advocate, Vice-President of Bangalore City Unit of BJS and now a Judge in the High Court of Karnataka, was detained under the orders of Shri M. L. Chandrasekhar, Commissioner of Police, Bangalore, issued on December 20, 1975. He remained under detention till January 20, 1977. The grounds of detention made vague references to his RSS background and support to the J.P. movement without mentioning any specific activities in this regard. He was alleged to have addressed some election meetings organised by the BJS during the period from February 1972 to October 1974. It was mentioned in the grounds of detention that Shri Rama Jois was in the habit of helping aggrieved Government servants and detenus through writ petitions and appeals and had played an important role in the defence of S/Shri Atal Bihari Vajpayee, Madhu Dandvate, L. K. Advani and S. N. Mishra, who had filed writ petitions in the High Court of Karnataka challenging their detentions. The report received from the DIG (Intelligence) by the Commission does not contain any information suggestive of the allegation that Shri Rama Jois was associated with the RSS. This case was heard by the Commission at Bangalore in May, 1978. Shri M. L. Chandrasekhar, former Commissioner of Police, Bangalore, stated that the detention order was issued in good faith and on sufficient grounds for the purpose of preventing Shri Rama Jois from acting in a manner prejudicial to the maintenance of public order. Shri Chandrasekhar could not explain as to how the legitimate professional activities of Shri Rama Jois could be construed to mean a threat to the public order; but he persisted in justifying his action. A notice under section 8B of the Commissions of Inquiry Act, and a summons under rule 5(2)(a) of the Commissions of Inquiry Rules were, therefore, issued to Shri M. L. Chandrasekhar. He responded to the summons and stated that he had issued the detention order in respect of Shri Rama Jois in good faith considering his professional activities to be political and added that "My explanation is that it is an error of judgment". The Commission, therefore, decided not to pursue the matter further.

- (v) Shri V. H. Master alias Veerappa was detained on August 1, 1975 under the orders of the District Magistrate, Raichur. The grounds of detention indicate active involvement of Shri Master in Labour activities. It was alleged that he was an activist of CPIML which was a banned party. The order was confirmed by the State Government and the continued detention was also confirmed in the first, second, third and fourth, four-monthly reviews. At the time of the next

four-monthly review, the Additional Home Secretary reviewed the case with DIG (Intelligence) and CIO of the IB, MHA, Government of India and recorded on January 28, 1977, that—

"He is not a member of the banned organisation. Some years ago, he had some contacts with CPIML, that is all. He is only a labour leader with leanings towards CPIML ideology. I think that the State Government can take a decision to release him."

Shri V. H. Master was released on January 31, 1977.

- (vi) Shri Jaipal son of Shri Samuel was detained under the orders of Shri R. Shankarappa, DM, Chickmagalur, issued on February 5, 1976, on the ground that he had been creating a lot of trouble in the villages and threatening the planters that he would set fire to the Coffee Estate if he was not supported. He was also alleged to be preventing the Tehsildar and Block Development Officers in the distribution of free sites to the landless persons. The Superintendent of Police, Chickmagalur, wrote to the DIG of Police (Intelligence and Railways), Bangalore, on February 12, 1976, that the District Magistrate, Chickmagalur, had issued the detention order in respect of Shri Jaipal without calling for any report from the police but acting on recommendation of the BDO and Tehsildar. The detention order was confirmed on February 17, 1976, by the State Government. The case was reviewed in March 1976 and the Home Secretary recorded on March 5, 1976, that:

"The reason which weighed with the D.C. to detain Shri Jaipal is that he interfered with the allotment of sites to weaker sections in the village. It is not clear how an individual could seriously hamper distribution of sites. The D. C. has not stated that Shri Jaipal is a member of any banned organisation or that he has the political support of any organisation. There is also no police report against Shri Jaipal. In fact, the D. C. has said that the police have not taken any action nor has he received any report from the police. It is not desirable to invoke provisions of MISA for dealing with individuals who may attempt to work against government programmes when such individuals are not backed by any organisations. Such individual cases of violation of laws could be dealt with under normal laws. We may, therefore, revoke the orders of detention under MISA issued by the D.C. and release Shri Jaipal."

The detention order was revoked on March 23, 1976. This case was heard by the Commission in May 1978 and a notice under

section 8B of the Commissions of Inquiry Act and a summons under rule 5(2)(a) of the Commissions of Inquiry Rules were issued to Shri R. Shankarappa, former D.M., Chickmagalur. Shri R. Shankarappa, responded to the summons and in his statement referred to a civil suit connected with this case, still pending before the Court. The Commission, therefore, ruled that the case would be kept pending and heard by the State Authority for detailed examination.

- (vii) The District Magistrate, Tumkur, issued on July 21, 1975, detention orders in respect of 11 industrialists on the ground that they were indulging in irregularities and diverting the raw materials issued to them for manufacturing of certain items which they were not manufacturing. Only 7 of them could actually be detained. The file shows that these detentions were ordered on the recommendations of the Joint Director, Small Scale Industries, who addressed a letter to the District Magistrate, Tumkur, on July 19, 1975, in this connection. When the case was reviewed in the Home Department, the Home Secretary recorded on August 1, 1975, that :

"I have gone through these papers carefully. The evidence furnished in every case is grossly inadequate to give any decision whether these persons have misused the scarce raw materials."

The Home Secretary pointed out that the necessary details justifying the detention were still awaited from the Joint Director of Small Industries. It was, therefore, decided to confirm the declaration and review the case after the receipt of these particulars. The detention order was confirmed on August 2, 1975. The case was reviewed again after the receipt of the required information from the office of the Joint Director of Small Scale Industries. It was observed that there was no material to prove the charge of misuse of scarce raw materials and that "at the most the proprietors of these small scale industries were unequipped or ill-equipped for the manufacture of products for which the imported raw material was issued". It was pointed out that "it was not a ground to come to any conclusion that these imported raw materials have been sold in the open market at the blackmarket rates. The fact that the raw materials are being misused is no ground to detain a person under MISA." The orders in respect of these persons were revoked on September 3, 1975.

19.146 All the detentions under MISA made in Karnataka during the period of the emergency were ordered by invoking section 16A of the Act. As such, none of the detenus was informed of the grounds of his detention. Detention orders issued by the District Magistrate with the declaration under section 16A were required to be confirmed by the State Government within 15 days. The detaining

authorities used to send to the Home Department copies of the detention order, declaration under section 16A and the grounds of detention. These were examined in the Home Department and put up to the Chief Minister for obtaining his orders of confirmation of the detention orders. Files reveal that in several cases the confirmation orders were issued in anticipation of approval of the Chief Minister when his orders could not be obtained within the stipulated period of 15 days. It has been stated by the State Government in reply to the Commission's questionnaire that such cases were sent to the Chief Minister for obtaining his rectification of the decision taken by the Home Department. Scrutiny has also revealed that orders in respect of persons of pronounced political character were confirmed in a routine manner without any detailed examination of their cases. All other orders whether in respect of persons detained for their anti-Government, anti-emergency activities or for their anti-social behaviour were scrutinised thoroughly in the Home Department. It has been intimated by the State Government that in 24 cases the orders issued by the District Magistrates were not confirmed. Following illustrations will reveal the nature and extent of the scrutiny of MISA cases carried out in the Home Department.

- (i) S/Shri K. A. Venkataramaiah, Garuda Sharma and S. S. Sharma were detained under the orders of the Commissioner of Police, Bangalore City, issued on July 30, 1976. Shri Venkataramaiah, aged 74, was alleged to have contacts with KPCC(O), LSS, BJS, RSS and Sarvodaya organisations and it was mentioned that—

"Recently, he toured in the State incognito criticising the Government and making anti-emergency utterances."

Similar grounds were given for the detention of the other two detenus. The cases were examined in the Home Department. Shri K. C. K. Raja, Additional Home Secretary, recorded on August 4, 1976, on the file of Shri Venkataramaiah that—

"It is enough if at the appropriate time we invoke the provisions of Rule 31(a) DISIR to restrict his movements."

The recommendation was accepted and the order was not confirmed. Orders in respect of the other two detenus were also allowed to lapse.

- (ii) Shri A. Gundanna son of Shri K. Ananda Rao was detained under the orders issued on April 5, 1976, by the District Magistrate, Mandya. It was mentioned in the grounds of detention that ever since the promulgation of the emergency Shri Gundanna has been publishing materials in his paper 'Pooravani' without regard to censorship and making unfounded allegations against the Government. The immediate provocation appears to be a publication in his paper of the statements made by Shri K. Chikkalingaiah, MP and Shri C. Made Gowda, MLA, criticising the

decision of the Government to carry the water of Krishnarejasagar Dam to Mysore District by constructing varuna channel. Shri B. Purushotham, Deputy Secretary, Special, recorded on April 15, 1976, that—

“It is difficult to bring the grounds of detention under section 3(1)(a)(ii) of the MISA.”

and that—

“Taking an overall view of the grounds furnished by the D.M. Mandya, it does not appear to be a fit case for ordering detention of a person and much less can the declaration issued by the D.M. Mandya be confirmed.”

The Home Secretary recorded on April 15, 1976, that—

“The proper course could have been to take action against Shri Gundanna under the Prevention of Publications of Objectionable Matters Act, 1976 or to take action against him for having published articles without subjecting them to censorship.”

The District Magistrate, Mandya, was informed on April 19, 1976, that the detention ordered by him was not confirmed by the State Government. Shri Gundanna was released on April 24, 1976.

19.147 Scrutiny has revealed that in addition to the 24 cases where orders issued by the DMs were not confirmed and the detenus concerned were released within 15 days, the review carried out in the Home Department resulted in the release of many more detenus within a short time after the detention. It is seen that the orders in such cases were confirmed in the first instance either to uphold the authority of the District Magistrate (as was mentioned specifically by the Home Secretary on March 5, 1976 in the case of detention of one Shri Jayapal of District Chickmagalur) or with the intention of taking up the case for review very soon after collecting more details from the detaining authority. It is seen that the first four-monthly review in such cases was taken up within a short time after the orders were confirmed. Scrutiny has also revealed that special reviews were made by the Additional Secretary in consultation with the DIG (Intelligence) and District authorities, whenever representations received from or on behalf of the detenus demanded this and a fairly good number of persons were released as a result of consideration of their cases in such reviews.

19.148 The four-monthly reviews of MISA cases were carried out in the Home Department. No formal committee was appointed for conducting such reviews. It has, however, been stated in reply to the Commission's questionnaire that 'as and when considered necessary, the Deputy Inspector General of Police (Intelligence), Central Intelligence Officer and the detaining authority, were also associated with these

reviews'. The following illustrations may be found noteworthy in this connection :

- (i) Shri K. D. Appachu and his son Shri K. A. Kariappa were detained under the orders of the DM, Coorg, issued on August 2, 1976. It was alleged in the grounds of detention that Shri Appachu had in collusion with the Revenue Department officials managed to secure 10 acres of Government paisari land in Anthurnallu village even though he had sufficient lands and was an economic holder. The order was confirmed by the State Government on August 16, 1976. Smt. Chinni Appachu wife of Shri K. D. Appachu sent a petition on August 7, 1976, alleging that her husband and son were detained as a result of a land dispute and their detention was unwarranted. The case was examined in the Home Department in detail and the Home Secretary recorded on September 16, 1976, that—

“By no stretch of imagination can it be said that he has acted prejudicially to the security of the State and public order.”

The order was revoked on September 29, 1976, on the recommendations of the Home Secretary.

- (ii) Shri Y. S. Sidde Gowda was detained under the orders dated May 19, 1976, of the District Magistrate, Mysore, allegedly for harassing some Harijans. The order was confirmed on June 1, 1976, by the State Government. In a review of MISA cases, made by the Additional Home Secretary with the DIG (Intelligence) on July 22, 1976, it was decided to check whether there was any case pending against Shri Sidde Gowda under the normal law. Shri Sidde Gowda sent a petition on September 10, 1976, alleging that he was detained because of some complaint lodged by persons inimical to him. On October 13, 1976, the District Magistrate, was asked to send his recommendations about the continuance or otherwise of his detention. No reply was received from the District Magistrate but the order was reviewed in the Home Department and the detention order was revoked on November 9, 1976, on the basis of following note recorded by the Additional Home Secretary on November 4, 1976 :

“Enquiry shows that no case is pending against him in this connection; normal laws are adequate for dealing with the persons of this type and detention under MISA is not justified.”

- (iii) Shri Maniapanda Nanjappa son of Shri Ganpathi of BJS was detained under MISA under the orders of the District Magistrate, Coorg, dated August 3, 1976. His detention was confirmed by the State Government on August 16, 1976. He was released on parole

on August 13, 1976. He sent a petition to the Chief Minister on October 20, 1976, requesting for extension of parole and stating that he had resigned from the membership of the Jan Sangh Party and also desired to retire from politics. The Chief Minister endorsed that 'the parole may be extended by another 15 days. In the meantime, examine the request made by him for his release in view of the fact that he has resigned from the Jan Sangh'. He sent another petition to the Chief Minister in November, 1976, saying that he had resigned from the BJS and had sent the resignation letter to the Secretary, Jan Sangh Party, Coorg. The Chief Minister sent the petition to the Home Secretary with the following endorsement, dated November 28, 1976.

"I have already spoken to you over the phone. The resignation letter of the applicant from Jan Sangh is attached to this petition. This case may be reviewed and put up."

Detention order was revoked on January 10, 1977, after obtaining the approval from the Government of India. Similarly, detention order in respect of Shri Putte Gowda of Mysore District, detained on November 13, 1975, was revoked after he wrote that he had resigned from the primary membership of the BJS.

19.149 It has been intimated by the State Government that it had recommended to the GOI revocation of detention orders in 39 cases. The Government of India accepted the recommendation in 20 cases, rejected 11 cases, sent no reply in 6 cases, and directed the State Government to review the remaining two cases according to the guidelines issued in January 1977. The following cases may be found noteworthy :

- (i) Shri M. D. Some Gowda of Congress (O), Municipal Councillor, Chickmagalur, was detained under the orders of the District Magistrate, Chickmagalur on January 14, 1976, allegedly for his anti-Government activities. The Home Secretary recorded on January 29, 1976, that—

"The declaration has been made by the D.M. Chickmagalur, on his making confidential enquiries about the unlawful activities of the detenu. He should have at least obtained a police report in support of his personal knowledge. The grounds on which the detention is made are inadequate. Further enquiries will be made about the grounds of detention and the matter examined afresh.

In the meantime, the declaration made by the DM, Chickmagalur may be confirmed."

The order was confirmed on February 3, 1976. The case was referred to the DIG (Intelligence), who reported on May 17, 1976, that—

"It is seen from the records that Shri H.D. Somegowda is an active Congress (O) leader of Chickmagalur and President of the Youth Congress, Chickmagalur District. He is also a Municipal Councillor, Chickmagalur Town Municipality. He is noticed participating in all meetings of Congress(O), Chickmagalur District.

He has not come to notice for any objectionable and overt activities."

Though the continued detention of Shri Some Gowda was confirmed on May 20, 1976, the case was referred to the Government of India on May 29, 1976, requesting them to accord approval for the release of Shri Some Gowda. Government of India turned down the case on June 14, 1976, on the ground that Shri Some Gowda had organised anti-emergency procession of the students during LSS agitation and it was apprehended that after his release, he was likely to become active among students and Congress (O). The State Government was, therefore, asked to re-examine the case. The DIG (Intelligence) was directed to make fresh enquiry on the points mentioned in the report of GOI. The DIG (Intelligence) wrote on July 21, 1976, that "it is reported that he had not participated in any anti-emergency agitation and has not organised student agitations in the District. The individual is not likely to become active among students and Congress (O) and organise agitations on his release from detention." A message was sent to Government of India on July 27, 1976, seeking approval for the release of Shri Some Gowda. The file shows that no reply was received till January 15, 1977, despite 5 reminders sent to the Government of India. However, the State Government released Shri Some Gowda on parole on November 2, 1976, and it was extended from time to time until the Government revoked the order on January 15, 1977.

- (ii) Shri Raghuvver Naik, an active member of BJS was detained under the orders of the District Magistrate, South Kanara, on December 21, 1975. He was released on parole on October 28, 1975, as he was suffering from acute asthma. The health condition of the detenu as per the report of the Assistant Surgeon, Central Jail, Bangalore, was poor and it caused concern to the Government. A message was sent to the Government of India on November 4, 1976, requesting for their approval to revoke the order. No reply was received until January 22, 1977, when the State Government revoked the order on its own.

- (iii) Shri Shakeel Raza son of Shri Akbar Ali Sahib, a Caretaker in the office of Jamaite-e-Islami Hind, Bangalore, was detained under the orders of Shri M. L. Chandra Shekhar, former Commissioner of Police, Bangalore, passed on July 4, 1975. It was alleged in the grounds of detention that Shri Shakeel Raza was a staunch member of JEI. Specific references were made to three public meetings, two at Bangalore in September, 1970 and December, 1972, and one at Mysore in October, 1974, where Shri Shakeel Raza was alleged to have addressed the gathering in furtherance of the cause of JEI. However, enquiries made with the DIG (Intelligence and Railways), Bangalore, have revealed that there are no reports regarding these public meetings addressed by Shri Shakeel Raza available in the office of the State Special Branch. The State Government confirmed the detention orders on July 14, 1975. The case was reviewed on December 4, 1976 and the Deputy Inspector General of Police (Intelligence and Railways) was of the opinion that since Shri Shakeel Raza did not belong to the hard core of the banned organisation and was only a petty employee of this organisation, his case should be considered for revocation of the detention orders. A wireless message was, therefore, sent to Government of India on December 14, 1976, requesting them to accord approval for the revocation of detention orders in respect of Shri Shakeel Raza on the ground that he was not an activist and was merely a petty employee of the JEI, Bangalore. The Ministry of Home Affairs replied that :

"According to information available with us Shri Shakeel Raza is an activist 'RUKAN' and Secretary of JEI of Karnataka. There are no indications of any change in his attitude. He is said to command good influence. It is, therefore, felt that his release may provide a filip to the party's activities in the State. In the circumstances, it may not be opportune to consider the question of his release from detention at present. The State Government may like to re-examine the issue in the light of the above information."

MHA's file shows that the above advice was based on information received from the Intelligence Bureau. Shri Shakeel Raza was released on March 21, 1977, after revocation of the Emergency.

19.150 Scrutiny has revealed that the State Government has released a large number of a detenus much before the revocation of emergency after considering their representations or reviewing their cases. 57 detenus were released between July and December, 1975, and 110 in the year 1976. It is seen from the records that 191 detenus out of a total of 487 had been released before January 20, 1977, when the instructions were received from the Ministry of Home Affairs to relax the rigour of emergency and

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release the political detenus who were not connected with the banned organisations. 170 detenus were released in January, 1977, as a result of review made by the Additional Home Secretary, jointly with the DIG (Intelligence) and Central Intelligence Office and District authorities, 27 persons were released in February 1977. All the political detenus had been released by February 20, 1977. There were only 110 persons, 94 members of the banned organisations and 16 economic offenders held in custody on March 21, 1977, when the emergency was revoked and orders releasing all the detenus were issued.

19.151 The Government of Karnataka has not given a definite reply to the Commission's questionnaire regarding the policy evolved by the State Government on the subject of parole. Scrutiny has revealed that the requests from and on behalf of the detenus for grant of parole were processed in the Home Department on the basis of the recommendations obtained from the DIG (Intelligence). A few illustrations are given below :

- (i) Shri Y. S. Patil, a staunch member of BJS was detained under the orders of the District Magistrate, Dharwar, on December 17, 1975. He was released on parole for 20 days on May 17, 1976 on the ground that he was suffering from enlarged prostate urinary infection. Parole was extended twice, once by 15 days and then by one month. However, he did not avail of the second extension of parole and surrendered to the Central Jail, Bellary, on June 22, 1976, as the condition of parole that he should remain within Bangalore City was not acceptable to him. He sent another petition on July 19, 1976, requesting for his release on medical grounds, which were certified by the medical report. He said that he was prepared to give an undertaking if the Government was ready to consider his release. He was released on parole for two months on September 17, 1976. The State Government decided to revoke the detention order and the Government of India was approached on September 22, 1976, for their views. The Government of India replied on September 30, 1976, advising the State Government to extend the period of parole by three months instead of revoking the detention. The detention order was ultimately revoked on January 20, 1977. Shri Patil remained on parole throughout from September 17, 1976, onwards.
- (ii) Shri Panduranga Yeshwant Nikharge detained under the orders of the District Magistrate, Belgaum, issued on November 13, 1975, was released on parole for three months on September 18, 1976, on health grounds. The parole was extended from time to time and he remained on parole until the detention order was revoked on March 21, 1977.
- (iii) Shri P. G. R. Sindia, detained in July 4, 1975, was released on parole for one month on November 25, 1976, on medical grounds.

The parole was extended from time to time and he remained on parole until the detention order was revoked on January 5, 1977.

19.152 It has been intimated by the State Government in reply to the Commission's questionnaire that 9 MISA detenus were refused parole on the ground of death of a family member; 20 on the ground of marriage of a dependant and 109 on the ground of serious illness of a family member. The following cases are noteworthy :

- (i) Shri Kariyappa was detained under MISA in Coorg. His wife requested the authorities on September 2, 1976, for the release of her husband on account of her mother's death. This was rejected on September 22, 1976, on the ground that the detenu's father who was also a MISA detenu had been released for one week for the same purpose.
- (ii) Shri Baje Vaikunte, father of Shri B. Y. Upendra, a MISA detenu, applied on January 16, 1976, for the parole of his son on the ground that wedding of the detenu's daughter was fixed on February 6, 1976. The application also refers to the illness of the detenu's mother. The Home Department sent the application to the Commissioner of Police, Bangalore for a report on January 27, 1976. No reply seems to have been received from the Commissioner of Police till June 3, 1976, when the matter was closed. The State Government has stated in their reply to the question on parole that no decision was taken in this case for want of Police report.
- (iii) Shri R. Ramma Murthy, a MISA detenu applied on December 29, 1976, for grant of parole for one month to enable him to attend his daughter's wedding. He was informed on April 28, 1976, that his request was rejected by the Government. His wife Smt. I. Sundari sent similar application on January 5, 1976, which does not appear to have evoked any response from the authorities. She made another request on February 21, 1976, for the release of her husband on parole for one week and enclosed a copy of the printed invitation card in proof of the wedding of her daughter fixed for March 8, 1976. This was also rejected on March 2, 1976. The file shows that the detenu was released on parole from March 6, 1976 to March 10, 1976, after the High Court of Karnataka issued orders to this effect.
- (iv) Shri S. Ahmed, a MISA detenu applied for parole on April 15, 1976, on the ground that his wife was suffering from high blood pressure and kidney disease. The District authorities were directed to make enquiries and send report. The report from the DC Dharwar dated April 27, 1976, confirmed the illness of his wife since November 1975. The request was, however, rejected by the State Government and the detenu was informed on May 3, 1976.

(v) Shri P. Ramachandra Bhat, a MISA detenu, applied on February 15, 1976, requesting for the grant of parole from March 12, 1976 to March 20, 1976, to enable him to attend the wedding of his sister fixed for March 14, 1976. This was rejected and he was informed on March 19, 1976, i.e. five days after the wedding itself was over.

(vi) Shri K. Venkatesh Baliga, father of Shri K. Mohandas Baliga, a MISA detenu, applied for the release of his son on parole from May 6, 1976 to May 20, 1976, to enable him to attend his brother's wedding fixed for May 16, 1976. Copy of the printed invitation card was also enclosed with the application. He was informed on May 7, 1976, that the request was rejected. He applied again on April 21, 1976 and May 8, 1976, but no action was taken in view of the decision already taken and communicated to the applicant.

(vii) Shri Gurunath Kulkarni, a student, was detained on December 27, 1975, under MISA. He filed a writ petition in the High Court of Karnataka praying for the issue of direction to the State Government to release him on parole to enable him to appear for the PUC final examination. On this, the High Court passed an order on March 22, 1976, that the petitioner shall be taken for examination under police escort. The State Government brought this matter to the notice of the Central Government contending that the High Court was not empowered to issue directions regarding parole which was within the exclusive discretion of the Government. An appeal was filed in the Supreme Court which granted stay order in respect of the order of the Karnataka High Court on April 1, 1976. Shri Kulkarni could not appear in the examination.

KERALA

19.153 According to the information supplied by the Government of Kerala, figures of arrests and detentions in Kerala during the emergency are :

MISA	..	790
COFEPOSA	..	97
DISIR	..	7134

19.154 Scrutiny of files has, however, revealed that 827 detention orders were issued. As such, 37 persons remained absconding and could not be arrested. Categorywise break-up of 790 detenus is given below:—

(i) Members/Associates of Banned Parties	476
(ii) Members/Associates of Political Parties	221
(iii) Others	93

19.155 The third category includes economic offenders, criminals and other anti-social elements. As many as 61 persons were detained, who were alleged economic offenders. More than fifty per cent of the detenus allegedly belonged to the banned parties—360 to CPIML, 115 to RSS and 1 to the Centre of Indian Communists. Among the political parties, the largest number of detenus was 139 from CPM. There were 3 journalists, 45 school/university teachers, 34 trade union leaders, 29 public servants and four women among the detenus.

19.156 Scrutiny of MISA files has revealed that the grounds of detention in respect of political detenus were stereotyped, invariably on cyclostyled forms with blank space for the individual's name, and some other particulars. Grounds are found to be the same in each case of a group of detenus. For example, in the case of persons belonging to CPIML, in the majority of cases grounds of detentions mention the political ideology of this party, the commitment of the individual to this ideology, and some vague reports about his closeness to certain prominent workers or leaders of this party. There is hardly any reference to any specific activities, remote or recent, on the part of the detenu. In the case of the persons belonging to the non-CPI opposition parties, grounds mostly refer to the call given by this group for a country-wide agitation and mention that the person concerned was likely to take part in this agitation. It is often mentioned in such cases that the person concerned was being detained on the apprehension that he would indulge in prejudicial activities in response to the call from his party. In the case of the workers of Socialist Party, the detentions were based on a single activity—a protest march taken out by them immediately after the declaration of emergency. The following illustrations will throw light on the type of political detentions ordered in Kerala:

(i) Shri Antony Alice Baby was detained under the orders of the District Magistrate, Idukki dated February 6, 1976, for alleged connections with the Centre of Indian Communists (CIC). It was stated in the grounds of detention that he was an active worker of CIC and had been engaged in implementing the decision of the party. The detaining authority wrote that there was every reason to believe that "Shri Antony was likely to incite the Government employees, students, workers and the general public to disobey the orders of the Government and rise in rebellion against the Government". There was no reference to any specific activities on the part of Shri Antony, who remained under detention on the above grounds till March 23, 1977.

(ii) S/Shri Shanmughan Janardhan, Mani *alias* Shankar and Narayana Velluny were detained under the orders of the District Magistrate, Trichur dated December 14, 1976. Grounds of detention refer to an agitation started by the Lok Sangharsh Samiti from November 14, 1975 against emergency. It is mentioned that the sponsors of this agitation were

"known to be thinking in terms of resorting to violence including sabotage of vital installations and attacks on the leaders of the Ruling Party". These persons were alleged to be taking part in some secret meetings, particulars of which were not mentioned. They remained under detention apparently on the above grounds until emergency was lifted.

(iii) Shri Thomas Ittoot was detained under the orders of the District Magistrate, Ernakulam dated January 16, 1976 allegedly for his prominent role in the Lok Sangharsh Samiti agitation. Grounds of detention refer to the call of Shri Jayaprakash Narayan for a country-wide agitation. It is mentioned that Shri Ittoot was actively engaged in carrying out this call and "there is every reason to believe that he will continue to indulge in such activities and incite the armed forces, the police, the Government employees, students and general public to disobey the orders of the Government and rise in rebellion against the Government". There was no mention of any specific prejudicial activity, remote or recent, which could support the above apprehensions.

(iv) Shri K. Shankar Narayan, Congress (O) President of Kerala, was detained under the orders of the District Magistrate, Trivandrum dated July 9, 1975. Grounds of detention refer to the meeting of the All India Opposition Parties held at Delhi on June 25, 1975. It was mentioned that Shri Shankar Narayan was duty bound to prosecute the plan for country-wide agitation and that it was reliably learnt that he was acting in collusion with CPM for this purpose and "Hence it is reasonably apprehended that this leader of Congress (O) will indulge in subversive activities including inciting the armed forces and police to mutiny in obedience to instructions from All India leadership". Shri Shankar Narayan remained under detention on these grounds till October 11, 1975.

19.157 Powers under MISA were also used to deal with some ration shopkeepers found indulging in hoarding, profiteering and black-marketing and other corrupt practices. Files show that action against such persons was taken after the detection of irregularities through raids on their shops. However, it is not clear from the grounds of detention whether the persons concerned were habitual offenders or were ever dealt with under the normal law. MISA was also used against some businessmen who were allegedly disrupting the supply of essential commodities through manipulation of prices and smuggling. Some of them were detained under MISA for alleged evasion of taxes. Use of MISA was also made by the administration against big employers to pressurise them to settle labour dispute in favour of their employees. There are some instances of use of MISA to deal with persons found responsible for misappropriation of funds belonging to the cooperative banks or societies. Four persons of District Idukki were

detained under MISA for alleged destruction of "tree growth of soft wood species in the Cardamom Hill Reserve". DM Quilon used powers under MISA against two persons who were allegedly pursuing money-lending business. Use of MISA against ordinary criminals, like thieves, bullies and rowdies was made very sparingly.

19.158 The following are the illustrations of detentions on non-political grounds:

- (i) Shri Devassia Kurian detained under the orders of DM, Idukki dated August 27, 1975, was allegedly found on August 23, 1975, transporting 7 quintals of ration-wheat in his jeep KLK-7279 driven by him. Grounds of detention mention that a regular case against him was also registered. The DM wrote that "There is every reason to believe that wheat seized from jeep No. KLK-7279 on August 23, 1975 was the ration-wheat misappropriated from ration shops and that Shri Kurian is engaged in black-marketing ration articles". Shri Kurian remained under detention till December 28, 1975.
- (ii) Shri K. J. Joseph, a ration shopkeeper, was detained under the orders of DM, Mallapuram dated July 22, 1975. It was observed that after the detection of irregularities as a result of an inspection by Civil Supplies Ration Inspector, the temporary licence granted to Shri Joseph was suspended. Shri S. Narayanswami, Special Secretary (Home) recorded that in view of the suspension of the licence, the question of preventing the detenu from indulging in prejudicial activity becomes irrelevant and the order must be revoked. The Special Secretary (Food), however, wrote that since the activity of the detenu shows scant respect and regard for the regulatory provisions promulgated by the Government, his detention was justified. He, therefore, requested the Special Secretary (Home) to reconsider his views. The Special Secretary (Home) recorded the following note on July 30, 1975:—

"I feel that it will be stretching the matter too far if we take a view as suggested by Secretary (Food). In my view, ARD licensee whose licence is suspended, cannot be regarded as likely to deal in any other essential commodity in the same mischievous ways. Such an argument is based on too many presumptions. Minister (Home) may decide whether the declaration should be confirmed or whether the detention order should be revoked."

The Minister Shri Karunakaran rejected the views of the Special Secretary (Home) and ordered confirmation of the declaration on July 31, 1975.
- (iii) The case of Shri K. T. Kunhali detained on July 26, 1975, under the orders of District Magistrate, Kozhikode, on the grounds of

misappropriating certain quantities of rice and wheat was similar to that of Shri K. J. Joseph given above. The licence of Shri Kunhali was also suspended. Shri S. Narayanswami, Special Secretary (Home) recorded on August 1, 1975, that since the licence of the shop had already been suspended, "it will be difficult to justify detention under MISA which is preventive in nature". The Special Secretary (Home), however, added that in the similar case, namely, that of Shri K. J. Joseph, the Minister (H) had agreed with the view of Special Secretary (Food) that such persons should also be detained. The file was sent to the Minister for orders and the declaration was confirmed on August 2, 1975. Shri Kunhali was released on December 5, 1975.

- (iv) Shri K. V. Joseph, a rubber shop owner of Kottayam, was detained under the orders of the District Magistrate, Kottayam, dated July 29, 1976, allegedly for dismissing three workers without any proper reason and without following proper procedure. It was alleged that he had not cooperated with the District Labour Officer in this connection. He was arrested on August 25, 1976, and the order was revoked on September 11, 1976 on the recommendations of DM Kottayam, who wrote to the Home Department recommending Shri Joseph's release on the ground that the labour dispute had by that time been amicably settled.
- (v) Detention of S/Shri N. S. Kudva and P. Gopalakrishna Shenoy, the managing partners of M/s. United Engineering Enterprise, Aroor ordered by the District Magistrate, Alleppey on September 24, 1976, offers another illustration of the use of MISA to deal with labour disputes. They were detained on account of some dispute between the management and the employees of the firm. However, grounds of detention also made vague references to the anti-social and anti-national character of these Engineers without citing any specific incident. They released on parole from September 29 to September 30, 1976 and parole was extended to October 8, 1976. The detention order was not confirmed by the State Government and it was allowed to lapse. It appears from the file that after their release on parole, some negotiations had taken place and after the dispute was settled in accordance with the instructions of the authorities, the detention orders were allowed to lapse.
- (vi) Shri A. C. Chacko, aged 70 years, was detained under the orders of the District Magistrate, Trichur dated August 17, 1976. The grounds of detention supplied by DIG (Emergency) mention that Shri Chacko had been taking anti-labour stance in all his firms for the last several years and was openly criticising the 20 Point Economic Programme of the then Prime Minister. It was also mentioned that in a raid conducted on his firm on August 13,

1976, a case of tax evasion involving a huge amount was unearthed. His son submitted a petition to the Home Minister on August 26, 1976 requesting for the release of his father who was aged over 70 and a chronic diabetic patient. It was enquired into by DIG (Intelligence) and the order was allowed to lapse on the basis of the police report which said that his detention had had a 'magic effect' and the attitude of the firm towards the labourers and towards the Economic programme of the Government had changed since the arrest of Shri Chacko.

- (vii) A detention order under MISA against Shri Naziruddin was passed by the District Magistrate, Quilon on January 17, 1977. The detention order appears to have been based on a dispute between the employees and management of Nazir Tiles Works, Ashtamuti. It appears that the management had declared a lock-out in the factory because of some labour troubles and Shri Naziruddin, the proprietor, was not accepting the advice of the administration to lift the lock-out. The Government confirmed the detention order on January 31, 1977. However, the District Magistrate revoked the order on his own on March 2, 1977, stating that "as the circumstances warranting his arrest and detention no longer exist, I have now issued order revoking the detention order". It is nowhere explained as to what the circumstances referred to were and how they had changed since the issue of the detention order. File also shows that Shri Naziruddin was not actually arrested and it appears that he had gone underground and worked for the revocation of his detention order.
- (viii) Shri K. Mohd. Sali, Manager, Beena Industry, Manufacturing rolling shutters and rolling grills, was detained under the orders of the State Government dated October 8, 1975. The file shows that his detention was based on a dispute between the employees and the management of the factory. It appears that the management did not respect the agreement arrived at during a meeting with the Deputy Labour Officer, Alwaye and later closed the factory on September 3, 1975. This led to a *satyagraha* by the workers. File shows that the matter went up to the Chief Minister and after a discussion among the Minister (A&L), Special Secretary (Home), Law Secretary and Labour Secretary, decision to use MISA was taken. Shri Sali was detained on October 9, 1975. He was released on parole from November 19, 1975 to November 28, 1975. Certain negotiations appear to have taken place during this period. Shri Sali sent a petition to the Government on December 4, 1975, and the order was revoked on December 6, 1975. It appears from the file that Shri Sali had, during the period of parole, settled the dispute to the satisfaction of the authorities.
- (ix) Shri Shashi Dharan was detained under the orders of the District Magistrate, Quilon, dated October 18, 1976. Grounds of detention show that he was lending money to economically poorer sections of society and other people in financial difficulties and charging exorbitant rates of interest. It was further mentioned that "there is also reason to believe that he is involved in serious economic offences". No specific incidents involving him in these matters were mentioned. Shri S. Narayanaswamy, Special Secretary (Home) recorded on October 28, 1976 that in cases of this kind, police could take action under normal laws and "I feel that use of MISA should be avoided for such purposes". Shri Karunakaran, Minister for Home, overruled Special Secretary (Home) and confirmed the declaration on October 29, 1976. Shri Shashi Dharan remained under detention till February 23, 1977. His brother Babu Rajendra Prasad was also detained under MISA on the same ground and was released on February 23, 1977 only.
- (x) Shri M. A. Jayni was detained under the orders of the Commissioner of Police, Ernakulam dated August 25, 1975. He was a commission agent at Ernakulam Market earning Rs. 2000 to Rs. 4000 by way of commission. He was involved in a case under sections 323, 340 and 343 IPC on April 20, 1975. Grounds of detention mention that he was an influential leader and "there is reliable information that he is financing the organisation of JEI which is a banned organisation. He is likely to sponsor a violent agitation programme of groups who are against the promulgation of the present emergency. He is likely to incite communal passion which will pose a serious threat to the security of the State and maintenance of public order." No specific incidents were quoted in support of the above allegation. File shows that in the margin of the page where these grounds were mentioned, the Special Secretary (Home) had remarked "this may not be relied on as a ground. Delete in the letter to the Government of India." However, the order was confirmed by the State Government on September 6, 1975.
- (xi) Shri C. O. Shiv Chander Das, an arms and ammunition dealer of Trivandrum, was ordered to be detained by the District Magistrate, Trivandrum on May 6, 1976. Shri P. K. Hormeses Tharakan, SP (Economic Offences), Trivandrum, had written to the District Magistrate, Trivandrum, on May 5, 1976, requesting for the issue of the detention order in respect of Shri Shiv Chander Das on the ground that one weapon identified as manufactured in China was recovered from his shop. It was mentioned that examination in police laboratory had confirmed the obliteration of the number of the weapon. It

was, therefore, suspected that the dealer was indulging in large scale smuggling of arms and his activity was prejudicial to the security of the State and maintenance of public order. The District Magistrate appears to have acted on the basis of this report from SP (Economic Offences) without calling for a report from the District Police. The file shows that Shri Shiv Chander Das could not be detained till September 3, 1976 when Shri A. Mohd. Junju, the new SP (Economic Offences) took over and wrote to the DM that after a search of the premises with the Central Excise and Income Tax authorities, it was found that there was no material to justify the conclusion that Shri Shiv Chander Das was indulging in a large scale smuggling of foreign arms. The District Magistrate was, therefore, requested to revoke the detention order that was pending execution at that time. The District Magistrate revoked the order after obtaining approval from the Government.

19.159 As intimated by the Kerala Government all the detentions under MISA were ordered under section 16A of the Act. No detenu was, therefore, communicated the grounds for his detention. As per the requirement of the Act, the declaration made by the DM in respect of persons detained for effectively dealing with the emergency was required to be confirmed by the State Government within 15 days from the date of detention order. Replies to the Questionnaire on "detentions under MISA, COFEPOSA, etc." show that in 12 cases the State Government did not confirm the declarations made by the District Magistrates and those orders were allowed to lapse. With regard to the detentions of non-political persons, such as, the economic offenders, unscrupulous businessmen and other anti-social elements, the Home Department appears to have scrutinised the orders and in quite a few cases the Special Security (Home) had recorded on the file that the use of MISA was not justified and the matter could be dealt with under the normal law. As described above, in the cases of the authorised ration dealers, whose licences had been suspended after the detection of certain irregularities in the shops, the view of Special Secretary (Home), that MISA was not relevant to such cases, was not accepted by the Home Minister, who confirmed the declarations made by the DMs. Similarly, his views in the cases of detention of moneylenders were also rejected. In the case of detention of S/Shri Balakrishnan and S. Armugham, ordered by DM Palaghat on November 11, 1976, on the ground of alleged misappropriation of funds belonging to co-operative bank, the opinion of Shri S. Narayanswamy, Special Secretary (Home), that use of MISA in such a case was not proper, was, however, accepted and declaration was not confirmed.

19.160 Four-monthly reviews of detentions ordered during the emergency, were conducted in the Home Department. In accordance with the instructions issued by the Ministry of Home Affairs

on October 10, 1975, a Cabinet Sub-Committee comprising of Chief Minister, Home Minister and two other Ministers, was constituted for the purpose of considering representations from the detenus and recommending their release. This committee, though not formally involved in the four-monthly reviews, was also looking into these matters. Reviews were, however, carried out in the Home Department on the basis of the recommendations from the detaining authorities. A scrutiny of files shows that these reviews were more or less a routine matter and continued detentions of the detenus were invariably confirmed at the time of such reviews. Only in the cases of detentions of various ration dealers, a decision was taken to revoke their orders at the time of their first four-monthly review. This was done under the belief that detention of such persons for four months was sufficient considering the gravity of their prejudicial activities.

19.161 The Cabinet Sub-Committee, used to meet periodically to consider the representations received from or on behalf of the detenus. Criteria laid down by the Government of India, namely, detenu's severance from his past political activities and assurance of good conduct in future, were followed in recommending the release of political detenus. Case of Shri R. Narayanan, a prominent worker of the Socialist Party, detained under the orders of District Magistrate, Alleppey dated July 11, 1975, may be quoted as an illustration in this regard. He was detained for his alleged active association with the JP Movement. He sent a petition on August 4, 1975 stating that he fully supported the 20 Point Programme of Smt. Indira Gandhi and assured that he would not work against the Government in future. This was sent to the IGP, who enquired into it and wrote that "inquiries reveal that he was having difference of opinion with the present policy of Socialist Party". The detention order was revoked on November 29, 1975, after obtaining approval from the Government of India. Similarly, Shri P. A. Saif, Municipal Councillor, Puthen Pureyil, another Socialist Party Worker, detained on July 11, 1975, was released on August 8, 1975 on similar considerations. Same was the case of Shri K. K. Mazid, another Socialist Party worker. In fact, most of the detenus belonging to the Socialist Party were released within a month or so of their detentions. While considering the release of political detenus, the reports from IG Police used to be given great weightage, and releases were recommended only after the police gave the clearance.

19.162 Examination of MISA files revealed a few instances in which the State Government had decided to release some political detenus, but the Central Government did not approve the proposal for their release. This will become clear from the following illustration:

The State Government sent a wireless message to the GOI on April 10, 1976 seeking their approval for revocation of detention orders in respect of S/Shri Krishnan Nair of Trivandrum, N. N. Sadananda of Quilon, Ram Chander Pillai of Alleppey, V. P. Kandhuni of Palaghat, K. Narayana Menon

of Mallapuram, and T. Aiappan of Kozhikode, all belonging to CPM. This was turned down by Government of India *vide* their message of May 1, 1976 on the ground that these persons were important functionaries of CPM and had the potential to mobilise the party cadre in the State. The State Government sent another message on May 13, 1976 saying that "The State Government have reconsidered their cases in all its aspects and they are satisfied that they could be released." Still the Government of India did not agree and wrote to the State Government on May 28, 1976 directing the release of these persons on parole for two months instead of revocation of their detention orders. Detention orders were ultimately revoked on September 23, 1976.

19.163 Examination of parole cases shows that the State Government was liberal in this regard. Requests for grant of parole were duly processed and sympathetically considered. Decision was taken only after ascertaining the views of the SP concerned and whenever the SP recommended grant of parole, it was given. Even prominent political leaders of the staunch opposition parties like CPM were granted parole for sufficiently long time whenever their requests were found to be genuine. Shri K. Prushotham, a CPM detenu, was granted parole to attend his sister's wedding in January, 1977. Another political detenu Shri V. A. Joseph of Calicut was released temporarily in November, 1976 to attend to his ailing father. Shri K. K. Kunhikannam Vaidya, a CPM detenu of Cannanore, was granted parole in December, 1976 to settle his daughter's wedding. Shri E. Kumaran, another CPM detenu of Cannanore, was granted parole on the ground of illness of his brother-in-law.

19.164 Even the RSS detenus were not normally refused parole when their requests were found to be genuine. Shri Shiv Shankar Alias T. S. Shankaran, a RSS detenu of Trivandrum, was granted parole in December 1976 on the ground that his family was experiencing financial difficulties. Shri N. Namadev Kamath, a MISA detenu belonging to RSS, was granted parole from January 7 to January 20, 1977, to attend to his ailing wife.

19.165 The files show that the intimation of the decision on the request for parole was always sent to the detenu. No one appears to have been refused parole when it was applied for on the ground of illness in the family or wedding of a near relative or some domestic problems requiring urgent attention. Some people were granted parole even on the ground of partition of property. Cases of Shri E. K. Imbachi Bave and Shri C. H. Ibrahim Haji of Cannanore District, both political detenus, may be cited as illustrations in this connection. Only in the case of detenus belonging to CPIML, the Government was rather strict in granting parole. Their cases were considered only after obtaining a report from the DIG (Crime). No CPIML detenu seems to have been released on parole. However, their requests for seeing some ailing family member were not completely

ignored and arrangements were invariably made to send them under police escort to their families for a day or so. The cases of Shri N. Chandran of Quilon, Shri Ishwaran Narayanan of Kottayam, can be cited in this connection.

19.166 The scrutiny of files has revealed a few cases of refusal of parole. Some of these are as follows:

- (i) Shri V. R. Bhaskaran, a CPM detenu of District Kottayam, applied on September 9, 1976, for grant of parole on the ground that his nephew was seriously ill. The report from SP Kottayam dated November 4, 1976, confirmed that his nephew was hospitalised due to blood cancer and parole was recommended. However, the SP was asked to intimate whether there was any one else in the family to look after the ailing boy. On November 11, 1976, the SP intimated that the patient was being looked after by his parents. Request for parole was rejected and the detenu was informed accordingly on November 16, 1976.
- (ii) Smt. K. P. Sarojini, wife of Vallan Kutty, a BJS detenu from Palaghat, applied on November 16, 1976, for the grant of parole to her husband on account of the illness of her mother. Report from SP Palaghat dated November 27, 1976 confirmed the illness but added that the old lady had three male adults and two others for looking after her. It was, therefore, not considered necessary to grant parole to her son-in-law, who was informed accordingly.
- (iii) Shri K. M. Ibrahim, a CPM detenu of Kottayam, applied on October 6, 1976, for two weeks parole to enable him to attend the wedding of his brother fixed for October 24, 1976. The report from SP Kottayam dated October 11, 1976, confirmed that the detenu's brother was getting married on October 24, 1976. However, the request was rejected on the ground that the detenu had already been granted six days' parole in August 1976 to see his sister's son.

MADHYA PRADESH

19.167 The total number of detentions under section 16A of the MISA and other Preventive laws during the period of emergency in this State was as under:

MISA	5,620
COFEPOSA	11
DISIR	2,521

19.168 Categorywise break-up of detentions under MISA is :—

Political Parties	1,807
Banned organisations	1,593
Anti-socials, Criminals and others	2,220

19.169 It was seen that the State Government adopted a tough attitude regarding detentions under MISA from the very beginning. Several messages and instructions were sent to the District authorities during the last week of June 1975 and the first week of July 1975 asking them to exercise rigour in the matter of detaining persons under the MISA and to curb the slightest agitational activity at any cost. Some examples of the instructions issued by the State Government and IG police, in this regard, are given below:

- (i) Wireless message (unclassified) dated June 26, 1975 from Home Secretary addressed to all District Magistrates and SPs mentioned "There should not be any hesitation or softness shown towards persons likely to prejudice internal security and any failure on this account resulting in disturbances in your district will be a reflection on your efficiency and watchfulness." The Chief Secretary, Madhya Pradesh also issued repeated instructions to DMs exhorting them to be strict in preventing the slightest trouble in their districts and also made it clear that any laxity will be viewed seriously by the State Government. In his memo. No. 619/CS/75 dated July 3, 1975 (in Hindi), he exhorted the district authorities not to allow any incident to develop further and observed that those officers, who had displayed laxity came into trouble later on. In another memo. MP-633/CS/75, dated July 8, 1975, addressed to all District Magistrates, the Chief Secretary stated—

"I have however noticed that some DMs have been rather soft in ordering arrests and detentions. I would even go to the extent of saying that what they did has not come up to the expectations of the State Government. It is a well-known fact that soft-peddling of issues does not pay in the long run and sooner or later, a heavy price is to be paid."

- (ii) The IG of Police, Madhya Pradesh, also issued various messages to district police authorities. Radio message No. C-828 dated June 26, 1975 from IG and the Home Secretary reads "Speed up preventive arrests of anti-social elements, potential agitators, All arrests be made under MISA." Radio Message No. SB/46/75-IV dated June 27, 1975 from DIG, L&R, Bhopal: "Consider immediate arrests/detentions of influential and active elements of BJS and RSS". Another radio message No. SB/46/75-IV, dated June 28, 1975, from IG of Police mentioned "Government feels that important BJS and RSS workers have not been rounded up. Please speed up action."

19.170 In addition to this, the IG sent several DO letters to many SPs in districts enclosing a list of persons who were to be considered for detention under MISA. Though the language used in these letters was guarded, asking the SPs to check their activities

and take necessary action, it was also stated "This is not a direction for punitive action. You are free to take your own decision."

19.171 In its reply to the questionnaire, the State Government has given several instances in which instructions for detaining persons under the MISA were issued by the Chief Minister, Chief Secretary, and the IG of Police. A few instructions are quoted below :

- (i) "On the eve of the visit of Shri V. C. Shukla to Raipur District in February 1976, Shri Shyama Charan Shukla, the then CM ordered the detention of Shri Lakhan Lal Gupta, a Socialist worker, who had taken active part in agitations in 1972, but subscribed publicly to the 20-point Programme. Instructions were sent on telephone and were not followed by a written confirmation."
- (ii) "The Chief Secretary on March 3, 1976, directed that DM Raipur be told on phone to detain 4 persons as per list. No written confirmation followed." (Cases of Ganga Prasad Chandrakar, Sardar Jaswant Singh, Vithal Rao Mahaske and Arun Kumar Chandrakar—all of District Raipur.)
- (iii) "In some other cases, the orders of detention were given orally by the Deputy Secretary in the Office of the Chief Minister and the Commissioner of a Division." (Cases of Somchand Chamar of District Sagar, Kundan Misra and Dharampal Pathak of District Balaghat.) In the case of Somchand oral instructions were given to the DM by Deputy Secretary to CM and the other two were detained on instructions from Commissioner, Jabalpur Division.
- (iv) "The then District Magistrate of Rewa has reported that Nipendra Singh son of Moradh-waj Singh of Rewa was detained on the basis of oral instructions from the Chief Secretary." The then DM Rewa in his letter No. 35/VS.1/CMS/77, dated December 15, 1977 (in Hindi), has categorically stated that he passed the detention order against Nipendra Singh on the oral instructions of the then Chief Secretary and not on the basis of any information from the police record."
- (v) "Radio Message C.535 dated August 22, 1975 from IG Police to SP Raipur reads :
"It has been decided to take action under MISA against the following as there is apprehension and danger from them to public order and security. Please comply—
(a) Surana Vakil ;
(b) Chandel Vakil."

19.172 Another feature of detentions in MP was that written instructions were issued by the State Government to the district authorities to indirectly persuade the detenus to renounce their association with

political parties and express faith in the 20-point programme by tendering a written apology, as a condition precedent for considering release from detention. Vide memo No. 639/CS/75, dated July 9, 1975, the Chief Secretary told the DMs :

"There are many persons who have been detained under MISA, section 151 Cr. PC and other Acts on the basis of their political affiliations, these persons are not necessarily law and order risks. It is not unlikely that some of these persons may tender an apology and also offer to make public declarations to the effect that they have discontinued their affiliations to their parties and that they have faith in the new economic programme of the PM. The Government are of the view that on tendering a written apology the cases of such persons should be reviewed in order to examine whether their detentions or arrests should be discontinued. However, all cases of this nature should be reported to the State Government so that due publicity should be made about the written apology tendered by the aforesaid category of persons."

19.173 Another memo. No. 647/CS/75, dated July 12, 1975, from the Chief Secretary referred to the earlier memo and asked the District Magistrates to ensure that in the written apology received from the detenus, it should come that they have severed relations with their party, will not indulge in any disruptive or violent activity, will cooperate with the Government and also that they believe in the economic programme of the Government.

19.174 Many persons were detained merely because they belonged to the opposition political parties and the grounds mentioned in their cases were apparently quite inadequate and sometimes irrelevant to the exercise of the power of detention under MISA. The main attack was on the Jan Sangh and the RSS. A large number of persons were detained on the ground of having associations with these organisations. In many cases, the grounds of detention only revealed that they had taken part in various party meetings and agitations of the Jan Sangh launched in the years prior to 1975 without mentioning any activity nearabout the time or after the emergency."

- (i) Shri Ram Singh Soni of District Raipur was detained on the basis of a report sent by SP which simply mentioned that he was an active worker of Jan Sangh and in the year 1974, he had participated in several meetings organised by the Jan Sangh against rising prices and levy policy of the State Government.
- (ii) Shri Ahmed Bhai son of Shri Hussain Khan of District Vidisha, was detained on July 4, 1975, on the basis of brief report sent by the SP which only mentioned that he had courted arrest in 1972-73 during agitations of Jan Sangh Party and on April 13, 1975, he again courted arrest for opposing the Government policy on taxes and price rise.
- (iii) Shri Vishnu Sharma of District Raipur was detained on September 17, 1976, on a report

of SP, Raipur that he was internally opposing the economic policy of the Government while showing outward support. He was sending false applications to the Government and was secretly propagating against family planning. He was hoodwinking villagers and taking money from them. No specific instance of the above activities was cited.

19.175 By DO No. 611/CS-75, dated July 1, 1975, the Chief Secretary directed all Collectors to take firm action against students indulging in disruptive activities. The Collectors and the SPs were required to prepare a list of troublesome students who were not to be admitted in any educational institution. MISA was also used to detain students and, in many cases, the detentions were ordered on grounds like creating disturbances in examinations, misbehaviour with the Principal or indulging in copy-ing and similar activities.

- (i) Shri Aditya Narain son of Shri Balmukand, a student of Ujjain was detained on July 30, 1975, on the grounds that he took part in agitations and slogan-shouting by students in the year 1972 and on July 21, 1975, he shouted 'shame... shame' during the inauguration of Youth Festival by State Education Minister.
- (ii) Shri Vijay Kumar Patil, a student of District Ujjain was detained on July 25, 1975, on the grounds that—(a) on October 4, 1973, he had threatened a bus driver and (b) on September 12, 1974, he beat a fellow student. In both these incidents, criminal cases were already launched against him in the court.

19.176 MISA was also resorted to for curbing trade union activities in factories and Government establishments. Some employees were detained merely because they spoke against the retrenchment of the staff or criticised the management. In many cases, only the past activities of participating in some agitations against the management were mentioned as the grounds. Shri J.P. Pandé, Secretary, All India Postal Employees' Union, Jabalpur was detained under MISA on April 10, 1976. The detention was ordered on the basis of a report by the Superintendent, Railway Mail Service and SP, Jabalpur, to the effect that Shri Pandé and one Shri Mahindra Bajpai were provoking the RMS staff. It was further mentioned in the report that on March 31, 1976, Shri Pandé had led a group of RMS officials and raised slogans against the recent retrenchment of RMS staff.

19.177 Several journalists were detained on the ground that they had been publishing items against the local administration and had taken part in agitations against the local administration in the previous years :

- (i) Shri Bhagwan Das Rath, Editor of a weekly "Krant Deep" of District Chindwara, was detained on July 17, 1975, on the grounds that he had taken part in the meetings and agitations against the local administration in the years 1973-74. He used to publish news

items against the police and District Administration with a view to blackmail the officers.

- (ii) Shri Ashok Kaushal, a journalist of District Seoni, was detained on July 10, 1974, on a single report of the SP alleging that he had published some false allegations in his fortnightly newspaper "Wain Ganga". The alleged objectionable items were : (a) about smuggling of jawar to Maharashtra with the connivance of the local Food Department; (b) about corruption in local Civil Hospital; (c) giving a twisted version of an incident involving a Hindu boy and a Muslim girl. He was also alleged to have expressed jubilation at the judgment of Allahabad High Court against Smt. Gandhi.

19.178 MISA was also resorted to against Government servants, University employees and employees of semi-government undertakings, like the Electricity Board, etc. The total number of employees in Government offices, universities and semi-government undertakings, like the Electricity Board, etc. The total number of employees in Government offices, universities and semi-government undertakings as well as Central Government employees detained under MISA was 255 according to the information furnished by the Madhya Pradesh Government in reply to the Commission's questionnaire on detentions. Majority of the employees were detained on the allegation of having association with the banned organisations or Jan Sangharsh Samiti, but in a few cases, MISA was used to prevent persons from helping accused in criminal cases.

- (i) Shri Dharampal Pathak, a Primary School Teacher and Shri Kundan Lal Mishra, a Clerk in District Education Office, both of District Balaghat were detained on a police report that they were trying to help certain persons who were accused in criminal cases. However, their detentions were not confirmed.
- (ii) Shri Madan Lal, a Primary School Teacher, District Jhabuwa was detained on July 12, 1975, on the basis of a single report that a Police Constable while passing from near his house at about 6 a.m. in the morning, had heard him talking against the emergency and the Prime Minister, inside his house.

19.179 A large number of alleged criminals and anti-social elements were detained under MISA. The grounds mentioned in many cases referred to their involvement in offences like assault, theft, gambling, bootlegging, etc. In many cases, only one or two offences under the Excise Act in the earlier years were mentioned by way of grounds. Thus, as in other States, MISA was used freely to detain petty criminals who could have been dealt with under the normal laws.

- (i) Three women, Smt. Sampati Bai, Smt. Shanta Bai and Smt. Sheela Bai, all of District Jabalpur were detained on the report of the District Excise Officer that they indulged in illicit distillation and were convicted and fined by

the court, in several cases during the years 1973-74.

- (ii) Shri Ambika Prasad Patha of District Khandwa was detained on July, 21, 1975, on the ground that he had taken part in a quarrel among students in Burhanpur College on July 2, 1974, regarding which a criminal case u/s. 389/147/323 IPC had already been registered against him. No other prejudicial activity was mentioned in the grounds of detention.

19.180 Divisional level screening Committees were set up with the Divisional Commissioner as Chairman, Range DIG and concerned District Magistrate and SP as members, for periodical reviews of MISA cases. These screening Committees used to submit quarterly reports concerning the release from or continuation of detentions of the detenus. At the State level, the final orders in review were passed by the Chief Minister. The State Government in its reply to the Commission's questionnaire on detentions, has stated :

"(a) Prior to August 19, 1975, there was no established mode of release. An *ad hoc* method of obtaining release by tendering a letter of apology and a public declaration of severance of relations with the party to which the detenu belonged and adherence to 21-point programme was laid down by the Government *vide* its communications, dated July 8, 1975, July 9, 1975, July 12, 1975 and July 29, 1975. All cases where the detenus tendered apology, severed their affiliations with the party and expressed full faith in the New Economic Programme were to be reported to the State Government so that due publicity could be made about the written apologies tendered.

- (b) On October 10, 1975, the Government of India laid down the policy of release *vide* their secret D.O. No. 11/16011/81/75-S & P (D.II), dated October 10, 1975. All the representations were to be considered by the State Committee, under the chairmanship of Chief Minister. Senior officers of the State CID and the Law Department may also be associated with this committee. Local representative of the Central Intelligence Bureau was also to be consulted."

19.181 The State Government has further informed that in 1,088 cases, it did not confirm the order of detention passed by the District Magistrate. However, the scrutiny of detention cases has revealed that even in those cases in which the orders of detention were confirmed by the State Government, not much scrutiny was done in the State Home Department. A cyclostyled notesheet was used in the Home Department containing an order of the Home Secretary, which only mentioned that he had gone through the record and was satisfied about the necessity of confirming the order of detention. Only the name and district of the detenu was filled in the form of the cyclostyled order.

19.182 In several cases even though serious legal and procedural irregularities were committed by the District Magistrates in passing the detention order, no notice was taken in the Home Department and the orders were confirmed. In the case of Prof. M. M. Chaturvedi of Gwalior College and 9 others, the District Magistrate, Gwalior, passed a combined order of detention in respect of 10 persons which was not legally permissible; yet this order was confirmed by the State Government. In 41 cases of District Dhar, a serious legal error was committed. The District Magistrate in his orders of detention mentioned the period of detention as 12 months when, according to law, he had no authority to detain a person under the MISA for a period beyond 15 days. This serious irregularity went unnoticed in the Home Department and the orders of detention were confirmed. However, after a period of one year, this illegality was noticed and the detention orders were revoked by the State Government and replaced by fresh detention orders after obtaining advice of the Law Department. While issuing fresh detention orders, another serious irregularity was committed at the State Government level. In 28 out of 41 cases, the orders of detention were issued in the forms used for detention under the COFEPOSA which mentioned prevention of smuggling as an item in the grounds. This mistake obviously occurred because wrong forms were used while issuing the orders. The Home Secretary himself used to confirm the orders of detention and the cases were not put up to the Chief Minister. This clearly discloses that the entire exercise was mechanical and without any application of mind. However, as regards periodic review, the orders of the Chief Minister were obtained for releasing detenus. It was noticed that the recommendations of the Divisional Screening Committee were not always accepted by the State Government. In many cases, the persons were released though the Divisional Committee recommended continuation of detention and vice versa. After every review, a list of persons ordered to be released was kept in the file which was signed by the Chief Minister, but no reasons were ever given for continuing or not continuing the detention of persons.

19.183 Even though a large number of persons were detained under the MISA, no adequate machinery was set up by the State Government to inquire into the complaints regarding wrongful detentions of person and abuse of powers by the district authorities. In their reply to the questionnaire on detentions sent by the Commission, the State Government itself has stated:

"Practice adopted in the Home Department was to send such complaints in original to the Inspector General of Police, the Commissioner and the DM. The number of such complaints was so large and scrutiny in the Home Dept. so scanty that sometimes it resulted in D.Ms. receiving complaints against themselves for disposal. Since no record has been maintained, no exact number can be given."

19.184 In reply to the Commission's questionnaire on detentions, the State Government has mentioned that after August 20, 1975, the District Magistrates were delegated powers to release detenus on

parole for a period not exceeding 13 days for attending to obsequies of near relations like parents, grandparents, sons and daughters, husband/wife, father-in-law and mother-in-law, subject to the condition of executing a bond with surety. On October 9, 1975, powers to grant parole for a period not exceeding two days in cases of serious illness of detenu's close relatives were also delegated to the District Magistrates. The period was further enhanced to 7 days *vide* order dated October 4, 1976. Thus Madhya Pradesh was the only State in which some powers to grant parole were delegated to the district authorities. In the remaining cases, parole was granted by the State Government.

19.185 It was seen that at the State level, sometimes parole was granted directly by the Chief Minister on applications presented to him on behalf of the detenus. (Cases of Shri Rishab Kumar Jain and 4 others of Sagar, Shri Komal Singh Raghuvanshi of District Guna, Shri Ram Prasad Shivhare of District Guna). Notes were received from the Chief Minister's office giving names of persons to whom parole was granted and no reasons were mentioned. Normally, parole was granted by the Home Secretary in most of the cases. It was seen that in many cases parole was granted on the grounds which were not found acceptable in other cases.

19.186 The following few examples are revealing:—

Cases in which parole was refused:

- (i) Shri Manohar Singh Death of grandmother of Datia.
- (ii) Shri Ramesh Chandra Marriage of younger Chaurasiya of Dist. brother. Jabalpur.
- (iii) Bheru Das of District Death of his sister. Dhar.
- (iv) Shri Balrishan Singh, Abduction of his eldest daughter. District Sarguja.
- (v) Dr. Purnendu Ghosh, Illness of wife and daughter (medical certificate produced). District Bilaspur.

Cases in which parole was granted:

- (i) Shri Rang Lal Rawat, For brother's illness. District Jabalpur.
- (ii) Shri Nirmal Chandra For the marriage of brother-in-law. Jain, District Jabalpur.
- (iii) Shri Babulal Gupta, Aunt's marriage. Gwalior.
- (iv) Shri Rajaram Moghe, One month parole for nephew's marriage. Gwalior.

Shri Suraj Bhan Singh of Gwalior was granted parole for sixty days by the Chief Minister, but no application of his was available on the file nor it was known for what reasons he had been granted parole.

19.187 Memo. No. 31-49/75/X/1, dated January 30, 1976 (in Hindi) from the State Home Department stated that since the Vidhan Sabha session was to start from February 5, 1976, the District Magistrate, while granting parole to MLAs in detention, should insert a specific condition that the detenu will not go to Bhopal during the period of his parole and shall not take part in any political activity. The memo. further directed the District Magistrates not to mention in the order, the condition that the detenu will not take part in the Vidhan Sabha Session.

MAHARASHTRA

19.188 According to the information given by the State Government, the total number of persons detained under the MISA and other Preventive Laws in this State was as below :—

MISA	5,473
COFEPOSA	400
DISIR	9,799

19.189 Categorywise break-up of detentions under MISA is as follows :—

Political Parties	780
Banned Organisations	1,717
Anti-socials & Criminals	2,794
Others	182

19.190 Among members and associates of political Opposition parties, the largest number was of followers of BJS (503) followed by the members of the Socialist Party (207). Detenus allegedly belonging to or having connections with RSS topped the list among the banned organisations (1,578). Anti-socials and criminals constituted more than half of the total number of detenus under the MISA.

19.191 Detentions were ordered and declarations under Section 16A(3) were issued by District Magistrates and Police Commissioners within their respective jurisdictions and reports were sent to the State Government for confirmation. At the Government level the cases were processed in the Home Department and were put up to the Minister of State for Home for final orders. Generally, cases in which confirmation of the detention order was not recommended by the Home Department, were put up before the Chief Minister for final orders. It was seen that a majority of the cases were recommended for confirmation on the basis of the District Magistrate's report. Only in 98 out of 5,473 detention cases, the State Government refused to confirm the detention orders passed by District authorities. The opinion of the Law Department was not obtained before issuing orders of confirmation.

19.192 A large number of detentions of political persons and those belonging to banned organisations were made without mentioning any specific activity on their part. The grounds put up by the police

before the detaining authority merely mentioned in general terms their past political activities such as taking part in Opposition meetings, etc. In a large number of cases from Bombay, Poona and Nagpur City, the Police Commissioners ordered the detentions of persons with political affiliation merely on a brief report by the subordinate officers stating that a named person was a member of a particular Opposition party and his activities were prejudicial to the emergency without mentioning any incident or fact to substantiate the allegation regarding prejudicial activity. In other Districts also, the District Magistrates passed detention orders in a similar manner.

19.193 To cite a few examples, one Shri Purshotam Narayan Bapat of District Ratnagiri was detained on December 11, 1975. The grounds of detention given in his case only mentioned that he was a staunch BJS follower and it was likely that he would participate in anti-Government activities. But no specific incident relating to his past or present activities was mentioned. The grounds of detention mentioned in the case of Shri Nabhiraj Maruti Mohalkar of District Sholapur detained on January 19, 1976, were that he was a member of the Socialist Party and this party was going to intensify its programme of opposition to the Government. No other activity was mentioned in the grounds.

19.194 A large number of persons belonging to banned organisations were detained only after mentioning the general ground that they were connected with the RSS or JEL. No specific activity was referred to in the grounds, which could be regarded as prejudicial to the security of State or public order. Simply being a member of or having connections with a banned organisation was considered sufficient for detaining a person under the MISA. (Cases of Shri Manohar Gopal Rao Bongirwar, Shri Indra Raj Thakre, Shri Krishna Gajanan Gode—all teachers in private schools in District Bhandara; Shri Sharad Shrinivas Nambholkar, District Jalgaon; Shri Sadashiv Govind Chauhan, Poona, Shri Ali Akbar Ghulam Hussain, Nasik).

19.195 In a number of cases the practice adopted was that a combined general report against 10 or 20 persons was sent by the police to the detaining authority for ordering detentions under MISA. This report was accompanied by a brief four or five line note regarding each person and these notes only mentioned that the named person was a member or sympathiser of a named party or organisation, without mentioning any specific activity—past or present. To cite an example, a combined general report with such brief and general notes, dated November 24, 1975, was sent in respect of S/Shri Bhaiyalal Zabbaji, Madhav Laxman Rajurkar and 15 others of Bombay City, to the Police Commissioner who passed the orders of detention, keeping a copy of this report in each case as grounds of detention.

19.196 There were few cases of persons being wrongly detained under MISA due to mistaken identity. In some cases, the State Government got an inquiry conducted through DIG/CID which revealed

that the grounds of detention in these cases were false and concocted. In reply to the Commission's questionnaire on detentions, the State Government has reported as follows :—

"In four cases, the Intelligence Agencies or the District Officers reported about misuse of MISA provisions. The details are as follows :—

1. Shri Murlidhar Harinarayan Katod, RSS, Ahmednagar :

He was detained on 15-1-76 on the grounds that he was an active BJS and RSS worker and had taken part in the agitation of the Sangharsha Samiti. He was released on 22-1-1977. The Dy. Inspector General, Intelligence, CID later brought to notice that (i) detenu was not holding any party position ; (ii) he had not taken any active part in the demonstrations stated ; (iii) his name did not figure in the FIR of Shrirampur Police Station ; (iv) no letter about staging of demonstration was written by him ; and (v) the entire proposal was based on incorrect narration.

The detention order was initially confirmed by the Government. However, it was revoked subsequently on the advice of the Administrative Committee as the detenu was neither an office bearer nor an active worker.

2. Radheshyam Nandlal Tiwari, Anti-social, Bhandara :

He was detained on 23-8-75 as an anti-social but the District Magistrate later reported that he was not an anti-social and therefore he should be released. The administrative committee recommended his release and he was released on 5-3-1976.

3. Pannalal Mohanlal Pokharna, Ahmednagar :

He was detained on 31-5-1976 as he had amassed wealth by means of moneylending business. He was released on 21-2-1977.

The Dy. Inspector General, Intelligence, CID reported that the detenu was detained as he had filed an application in the High Court for contempt of Court against the Revenue and Police Officers.

4. Shri Vilas Virchand Desai, RSS, Ahmednagar :

He was detained on 30-10-1975 as he was a faithful and active RSS worker. He was released on 28-12-1976.

The Deputy Inspector General, Intelligence, CID reported that Sh. Vilas

Desai was wrongly detained due to mistaken identity. He was detained instead of one Vasudeo Vishrem Desai."

19.197 Shri Vasant Rao Shankar Kulkarni of Ahmednagar District also remained in detention from February 6, 1976 to February 22, 1977 because of "mistaken identity". His wrongful detention was confirmed by the DIG/CID after inquiry. In the case of Shri Jagannath J. Joshi, Principal, Dharangaon College, detained on July 19, 1975, on the ground of being an RSS worker, the State Government made inquiry through DIG/CID which revealed that the allegations against him were false. A reference was made to the Government of India for revocation of his detention order. Government of India's concurrence was received on July 2, 1976, but on the papers submitted to the Chief Minister no orders for release of the detenu were passed and Shri Joshi continued in detention till January 26, 1977.

19.198 In two cases of District Dhulia, detention orders were issued against persons who had already died. (Cases of Shri Amrut Sonar and Shri Achyut Vaidya). The Superintendent of Police had proposed their detention on the basis of their alleged association with the RSS but after the detention orders were issued he reported that on verification these persons were found to have died earlier.

19.199 Some persons were detained on grounds which did not fall within the purview of Section 3(1) of the MISA. The detention of Shri Somesh Chandra Verma, District Nanded was ordered on October 14, 1975, on the basis of a report by Assistant Collector of Nanded mentioning that the detenu had defrauded the Government and many other persons in cases of Land Acquisition. He had obtained orders from the civil court for getting a much larger amount by way of compensation from the State Government, than was awarded earlier by the Land Acquisition Officer.

19.200 In some cases of District Usmanabad, it was seen that the District Magistrate passed the order of detention mentioning that the detenu be detained for a period of four months which was illegal. However this illegality went unnoticed in the State Home Department and the detention orders were confirmed. (Cases of S/Shri Sandipan Nivrati Bandegire, Hanumant G. Deshmukh, Maruti Dajiba Burud).

19.201 Many persons were detained on the ground of having been involved in ordinary offences like theft, assault, quarrelling, etc., which could have been dealt with under the normal law. A large number of persons allegedly involved in "bootlegging" and matka gambling activities was detained under the MISA. But in many cases the grounds given were of a general nature, mentioning that the person was involved in these activities, without giving any specific instance to substantiate the allegations. In many such cases where instances of offences concerning "bootlegging" and matka gambling were given, no previous convictions could be shown. Criminal activities many years earlier were also made the basis for ordering

detention in some cases. In the case of Shri Lalu Radhakrishnan Madhyan of District Ahmednagar, there was a single report of SP mentioning in general terms that the detenu was an anti-social engaged in *matka* business and was also holding secret meetings against the emergency, but no definite facts or specific instances of the above activities were mentioned. Shri Bahauddin of District Nanded was detained on July 19, 1975 on the grounds of being involved in some petty offences in 1973-74 and one incident of May 19, 1975 was also mentioned. Excepting a prohibition case in which he was fined Rs. 15, no conviction was shown against him.

19.202 According to the information given by the State Government, 57 Central Government employees, 23 State Government employees, 15 employees of municipal bodies and 24 employees of the Bombay Port Trust were detained under MISA during emergency. Excepting the employees of Bombay Port Trust, most of the other Government servants were detained on grounds of having association with the banned organisations particularly the RSS. The employees of Bombay Port Trust were detained for instigating strike.

19.203 The State Government had constituted an Advisory Committee with the Additional Chief Secretary as Chairman and Special IG Police, DIG/CID and Joint Secretary (Home) as members, for reviewing the cases of detention. The recommendations of this committee were put up before the Minister of State for Home for final orders. But it was seen that the recommendation of the Review Committee regarding the release of detenus was not always accepted by the State Government. In some cases, the detentions were ordered to be continued further by the Chief Minister contrary to the recommendations of the Committee. No reasons were given by the Chief Minister in his orders. (Cases of S/Shri Purshotum Khandekar, Sudhir Joglekar). In some cases, the Chief Minister or the Minister of State for Home used to order that detentions be continued for some time more or that review be done after two months. (Cases of S/Shri R. G. Maruskar, Fidda Hussain).

19.204 Requests for granting parole on health grounds were disposed of at the level of the Home Secretary. In many cases, Deputy Secretary (Home) also used to dispose of such applications. All other requests were put up to the Minister of State for Home for final orders. Generally, a scale regarding the period of parole was adopted for certain occasions, e.g., 5 days for marriage of daughter, 3 days for marriage of son, 3 days for death of a family member. Parole was to be granted to student detenus on the following scale :—

- (i) Upto graduate level 10 days prior to the commencement of examination till the examination was over.
- (ii) Post-graduate 20 days prior to the commencement of examination till the examination was over.

19.205 The State Government in its reply to the Commission's questionnaire has mentioned :—

"Steps were taken to systematise grant of parole to detenus desirous of appearing for various examinations. Such paroles were generally granted except to persons who were reported to be hard core of banned organisations."

19.206 No fixed scale was followed in respect of illness or for medical treatment of the detenu. Generally, requests for parole from sick detenus for having medical treatment or operation by their family doctor or doctor of their choice were rejected on the ground that the treatment could be had in Government hospital. (Cases of S/Shri Pirajee I. Bhuriyar, Bombay ; K. D. Rawalani, Distt. Jalgaon).

19.207 In some cases, requests for parole even on the death of father or mother of the detenu were rejected on the ground that the detenu was a notorious person and might go underground. (Cases of Baba Thakur Prasad Tiwari, Bombay ; Shri Jagdish Chandra, Bombay).

MANIPUR

19.208 Figures of arrests and detentions in Manipur during the emergency as supplied by the State Government in reply to the Commission's questionnaire are :—

MISA	231
COFEPOSA	16
DISIR	228

19.209 Scrutiny of MISA files has, however, revealed that only 143 persons were actually detained and the remaining 88 went underground and could not be arrested. Categorywise break-up of the MISA detenus is given below :—

- (i) Members/Associates of banned organisations 2 (both of RSS)
- (ii) Members/Associates of political parties . . . 14
- (iii) Others 127

The third category includes members of outlawed organisations like Mizo National Front, Revolutionary Government of Manipur, etc., criminals like thieves and receivers of stolen property, rowdies and bullies, smugglers and other anti-social elements.

19.210 A scrutiny has revealed that powers under MISA were used extensively to deal with persons suspected of connections with the hostiles engaged in insurgency. The number of persons detained on the grounds of insurgency and anti-social activities far outnumbered the political detentions.

19.211 There were no journalists, lawyers, teachers, trade union leaders, students and women among the detenus. MISA was not used against any public servant during the emergency. There were three MLAs of the Manipur People's Party among the

political detenus. The scrutiny of MISA files has shown that the grounds of detention in respect of the political detenus were of a general nature and referred to criticism of emergency. In the cases of persons detained on the ground of insurgency, the detaining authorities appear to have acted on the basis of suspicion only as the grounds of detention in respect of most of the persons of this category do not indicate any specific provision about their prejudicial activities. A unique feature of such detentions in Manipur is that the detaining authorities, particularly the District Magistrate (East) acted without any police report in most of the cases and ordered detentions on the basis of his own information. MISA was used against a large number of anti-social elements allegedly indulging in criminal activities. Grounds of detention in cases of this category also lack reference to specific incidents and offences involving these persons which could support the allegations made against them. For example, one Shri Kuba son of Shri Kangba was detained under the orders of DM (North) on September 20, 1976 on the basis of a report of Incharge Police Station, Mao. The report only mentioned that Shri Kuba was a terror in the area and no one was willing to give evidence against him. He remained under detention till February 25, 1977 apparently on this ground only.

19.212 The following cases of different categories illustrate the manner in which powers under MISA in the State of Manipur were used during the emergency:—

- (i) Shri N. Narayan Singh and Shri L. Jatra Singh were detained under the orders of District Magistrate (Central) issued on December 15, 1975, for their alleged RSS activities. It was also mentioned in the grounds of detention that these persons were collaborating with the Socialist Party, Manipur, for organising agitations to discredit the then Government. They were also accused of indulging in distribution of anti-Government pamphlets, though no specific details were given in this regard. The detention orders were confirmed by the State Government on December 29, 1975. Their detentions continued and on January 27, 1977, Shri Nimai Singh, ex-State Minister, wrote to the Chief Minister saying that Shri N. Narayan Singh was still being kept under detention whereas all other Socialist Party political detenus had been released by that time. The Chief Minister recorded on the file that "Why he has been left? He is a SSP detenu under MISA. Release him immediately", and marked the file to Additional Chief Secretary and Joint Secretary (Home). The case of Shri Narayan Singh was discussed in the meeting of the Review Committee on February 3, 1977 at which the DIG/SIB pointed out that Shri N. Narayan Singh was an active member of SSP only and was not connected with RSS. The DC (Central) had also reported on February 2, 1977 that he was not associated with the activities of the RSS. When

the file was put up to the Chief Minister along with the reports of the DIG/SIB and DC (Central), he recorded "As discussed in the Review Board today, Shri Narayan Singh is found to be an SSP worker as verified by the SIB. He may, therefore, be released". The order in respect of Shri Narayan Singh was revoked on February 4, 1977. Shri Jatra Singh was released on March 21, 1977.

- (ii) Shri W. Ibomcha, aged 15 years, was detained under the orders of District Magistrate (Central), dated March 1, 1976. Grounds of detention mention that he was a notorious goonda and active supporter of anti-social Revolutionary Party in Manipur, whose members had committed a number of robberies and dacoities in Imphal from 1968 to 1971. It was also alleged that he was involved in a case of copper wire theft in 1974 and another of theft of street lamps in January 1975. He was released on March 31, 1976 as a result of consideration of a representation sent by his father.

19.213 10 persons were detained under normal MISA and grounds of detention were communicated to the detenus concerned. Six of these cases were not approved by the State Government and the persons concerned were released within 12 days. Four cases were referred to the Advisory Board, which rejected three of them and detention orders had to be revoked. In respect of the fourth case, namely that of Shri Ako Shaiza, the State Government ordered revocation on the day the Advisory Board was to review the case. The review was, therefore, considered redundant and was abandoned.

19.214 133 persons were detained under MISA invoking Section 16A and as such none of them was communicated the grounds of his detention. As intimated by the State Government, 14 of these cases were not found fit for confirmation and the persons concerned were released after the expiry of 15 days. Law Department appears to have been actively associated with the scrutiny of cases in the Home Department and its opinion was invariably accepted. In the case of one Shri Pukho detained on January 27, 1976, on the ground that he was involved in one case of 392 IPC and was a notorious bad character, the opinion of the Law Secretary that he should be dealt with under ordinary law, was accepted and the detention was not confirmed. As orders in respect of the political detenus and hard core hostiles and their suspected supporters were issued on the recommendations of the IGP, there was no detailed scrutiny of these cases and detentions ordered by the DMs were confirmed. In a few of the other cases where the detentions were ordered by the DMs on their own, the Home Department examined the grounds of detentions critically and pointed out their irrelevancy or inadequacy. The examination of files has revealed that the Chief Minister used to record long notes in his own hand and conducted a thorough scrutiny of the cases

referred to him for obtaining his orders for confirmation. He is seen to have disagreed with the Chief Secretary in a few cases. This will be clear from the following examples:—

- (i) Shri M. Daili was detained under the orders of District Magistrate (North) issued on February 14, 1977, for his alleged dangerous and desperate character and connections with the undergrounds. The Chief Secretary recommended the confirmation of detention order but the Chief Minister recorded on the file that MISA should be used sparingly in accordance with the instructions of the MHA and persons of this category should be dealt with under the normal law. The Chief Minister ordered Shri Daili's release on February 18, 1977. The orders of release was, however, issued on March 4, 1977 as the Chief Secretary had asked for a report from the IGP regarding other cases pending against the detenu.
- (ii) Shri James Lokho was detained under the orders of the State Government issued on February 12, 1977, on the basis of a report from the IGP. This report mentioned that Shri Lokho was noted for adverse activities and had been known earlier for having secret links with the underground Nagas and was detained in 1970-71. The report contained a vague mention of his renewed activities among the Naga youth. When the file was put up to the Chief Minister, he recorded that the grounds were vague and detention seemed to have been manipulated by some opposition elements as Shri Lokho was an independent candidate for the coming Lok Sabha elections. The order was, therefore, revoked on February 6, 1977.
- (iii) Shri Devi Prasad was detained under the orders, dated November 11, 1976, of District Magistrate (North) as an alleged defaulter of loans taken from the State Cooperative Bank. It was mentioned in the grounds of detention that such activities tended to defeat the 20-point programme. Shri E. Sonamani Singh, Joint Secretary (Home) in his noting, dated November 18, 1976, recorded that the grounds of detention did not attract provisions of MISA and that "DC (North) should be informed that he should apply his legal mind before he exercises his power again under MISA". Shri H. S. Bulalia, Chief Secretary, however, recorded a note on November 19, 1976, to say that he felt that such persons could be and should be arrested under MISA. The Chief Minister, however, did not agree with Chief Secretary and the order was not confirmed as was proposed by the Joint Secretary (Home).
- (iv) Shri Ph. Iboyaima Sharma was detained under the orders of District Magistrate (Central), dated March 1, 1976, on the ground

that he was a habitual criminal. However, only one case of September 13, 1974, was cited in support of this allegation. A petition was sent to the Chief Minister alleging that the order of detention in this case was meant for one Ph. Iboyaima Sharma of Uropok Phurailatpam Lairembi, Imphal, and in his place Shri Sharma of Huidrom Leiki was arrested by mistake. The Chief Secretary mentioned in his noting that the grounds of detention completely ruled out the possibility of this being a case of mistaken identity. However, the Chief Minister recorded a note saying that since the address given in the detention order did not tally with the particulars given in the requisition letter of the Superintendent of Police, who had proposed the detention of this man, there was a doubt and the benefit of that doubt must be given to the detenu. The order was accordingly revoked on March 15, 1976.

19.215 In accordance with the instructions issued from the Ministry of Home Affairs, Government of India, in October 1975, a State level Committee was constituted on 24th November 1975, for reviewing the cases of persons detained under MISA in respect of whom a declaration under Section 16A had been issued. The composition of this Committee was:—

The Chief Minister	Chairman
DIG/CID	Member
Secretary (Law)	Member
Joint Director (SIB)	Member
Secretary (Home)	Member

Before this Committee was constituted, the review cases used to be considered by the IGP, Law Secretary and Home Secretary and thereafter the orders of the Chief Minister were obtained. The scrutiny has clearly shown that the four-monthly review of detention cases was carried out very systematically and the Review Committee used to meet periodically to consider the cases for continued detention. Sometimes cases of important persons arrested under DISIR were also discussed by the Committee. The Committee met 7 times between December 1975 and February 1977 and a large number of detenues were released as a result of its deliberations. In the first meeting held on December 5, 1975, the Chief Minister had ordered that all the detenues must be got medically checked up and the IG Prisons should make weekly visits to the Jail. In the meeting of March 20, 1976, the cases of persons detained for their alleged support to the hostiles were discussed and it was decided to release such persons if they gave a bond for good behaviour expressing their acceptance of the Shillong Agreement of November 1975 between the Government and the Naga hostiles and provided the CID had no objection to their release. The meeting held on June 19, 1976 turned out to be the most important meeting as 28 detenues, including 24 bad characters, were released on its recommendations. The opinion of the District

authority used to be given due consideration in arriving at such decisions. It goes to the credit of this Committee that a large number of persons were released much earlier than the emergency was lifted.

19.216 While considering the release of political detenus, the Committee used to follow strictly the criteria laid down by the Government of India. The main consideration which weighed with the Committee to recommend the release of a political detenu was invariably his severance of links with the Opposition party to which he belonged, followed by declaration of support to the 20-point programme. This will be clear from the following illustrations :—

(i) Shri N. Ningthou Singh, an important leader of the Socialist Party, Manipur, was detained in August 1975 allegedly for anti-Government and anti-emergency activities. His request for release on parole in September 1975 on the ground of illness of his wife, who was undergoing treatment for womb cancer, was turned down on the basis of a report of the IGP against him. He sent a petition on October 6, 1975 regretting his past political activities and confirming his faith in the 20-point programme of Smt. Indira Gandhi. Along with his petition he sent the letter of resignation to the Chairman of the Socialist Party and also an application to the President, MPCC, for joining the Congress Party. The Joint Secretary (Home) recorded on October 9, 1975 that "CS has directed that the letter of resignation from the Socialist Party, submitted by the detenu, Shri Ningthou Singh, is to be publicised and Shri Singh is to be released forthwith by tomorrow." It is seen from the file that a copy of his letter was sent for publication in all the leading papers and detention order was revoked on October 14, 1975.

(ii) Shri P. Kulchandra Singh, another Socialist leader detained in August 1975, sent a petition dated August 4, 1976, intimating that he had resigned from the Socialist Party with effect from August 1, 1976, and that "I have now well convinced that the Socialist Party is not progressive and rather it indulges in anti-social and anti-national activities." A copy of his resignation letter and statement to that effect published in "Simant Pratika" daily were enclosed with his petition and it was mentioned that the statement was broadcast by the All India Radio in the news bulletin on August 2, 1976. The Chief Minister recorded on this petition as follows :—

"Since he has resigned from the Socialist Party by open publication to the newspaper and broadcast by AIR and pleaded his faith to PM and her 20 Point Programme, he may be released forthwith." File shows that the Chief Secretary spoke to Shri Nayyar, Joint Secretary, MHA, in this connection and the order was revoked on September 13, 1976.

19.217 Scrutiny of files has revealed that the attitude of the State Government in matters relating to grant of parole was reasonably considerate and humane. It is seen that most of the parole applications which had resulted in grant of parole, were submitted direct to the Chief Minister and the Chief Minister had ordered grant of parole on the application itself. The Home Department used to issue formal orders only. Though no policy was laid down for the processing of the parole applications, requests for grant of parole appear to have been considered sympathetically. It has been intimated by the State Government that there was no incident where parole was refused on the ground of death of a family member marriage of a dependent, or serious illness of a family member, except in the following two cases :—

(i) Shri N. Ningthou Singh, a Socialist Party leader detained in August 1975, requested on September 1, 1975, for grant of parole for two months on the ground of the illness of his wife. He had stated that there was no male member in the family to escort his ailing wife to Dibrugarh for medical check-up which was prescribed by doctors. This was sent to the IGP for report. The IGP confirmed on September 14, 1975 that the wife of the petitioner had undergone treatment in Dibrugarh Hospital from May 9, 1975 to June 5, 1975 and was operated upon for womb cancer and was required to go to Dibrugarh Hospital after three months. It was also confirmed that there was no male member in the family except the detenu. The IGP concluded the report by saying that "However, it may not be advisable to release him in the present situation" and his request for parole was rejected. However, his detention was revoked on October 14, 1975 after he resigned from the Socialist Party and the news about his resignation was given wide publicity.

(ii) Shri G. Ibohah Sharma, an SSP worker detained on August 9, 1975 applied for parole for 15 days on March 15, 1976 on the ground of illness of his wife. The IGP was asked to send a report. The IGP forwarded on April 15, 1976 the report from the Sub-Inspector Incharge Police Station, Sinjamen without adding any comments or recommendations. The report confirmed that the detenu's wife had been suffering from bronchial asthma since the last week of March 1976 and was undergoing treatment. However, the Sub-Inspector concluded his report by saying that "It is said that she has a little improved now." In view of this report, parole was rejected by the Chief Secretary on May 13, 1976. The file does not appear to have been put up to the Chief Minister.

MEGHALAYA

19.218 In reply to the Commission's questionnaire, the Government of Meghalaya has supplied

the following figures of arrests and detentions made in Meghalaya State during the period of emergency:—

MISA	39
COFEPOSA	6
DISIR	20

19.219. Scrutiny of MISA files has, however, revealed that 49 detention orders under MISA were issued. Ten persons went underground and could not be detained. All the orders were issued under Section 16-A of the Act and on that account grounds of detention were not communicated to any of the detenues.

19.220 Categorywise break-up of MISA cases is given below:—

(i) Members or Associates of banned organisations	14
(ii) Members or Associates of Political Parties	2
(iii) Others	23

19.221 RSS accounting for 13 detentions has suffered the brunt of Government action against the organisations banned by the Central Government. There are only two cases of a political nature, one of a Congress leader, named Shri G. Mathow, and the other of Shri M. N. Majaw, a sitting MLA of Hill State People's Democratic Party. These leaders appear to have been detained on account of their anti-Government and anti-emergency activities. In the category of 'Others', there are 10 cases of alleged espionage involving 4 Bangladesh and 6 Indian nationals and 7 cases of foreigners overstaying in India. These persons were detained on the basis of recommendations of the State Special Branch. Recommendations for the detention of 3 Bangladesh nationals were received from the Government of Nagaland. Files show that they were arrested along with some Naga hostiles and were being tried for offences against the State. After the Government took decision to release the Naga hostiles involved in this case, it was considered necessary to detain these persons under the MISA and the Government of Meghalaya was requested accordingly. They were released in August, 1976, and repatriated to Bangladesh.

19.222 The break-up of MISA cases, given above, shows that use of MISA was directed mainly against the members of banned organisations and anti-national elements including a large number of foreigners. Only one case of non-political category involving 11 detenus deserves specific mentioning. District Magistrate, Khasi Hills issued detention order in respect of 11 persons on August 18, 1975, for their alleged illicit distillation of liquor. Grounds of detention mention that these persons were habitual offenders since 1972 and their activities had resulted in diversion of a vital foodstuff, i.e., rice from the genuine consumers and caused a serious rice shortage in Shillong. The State-level Review Committee also satisfied itself about the justification of their detention by ascertaining from the Excise Department

details like volume of turnover, quantity of rice diverted and period through which these activities were carried on by these persons.

19.223 Scrutiny has revealed that 29 detention orders were issued by the State Government itself. Only 10 persons, 3 of RSS, 1 of Anand Marg, and 6 illicit distillers were detained under the orders of the District Magistrates. All the detentions except in the case of illicit distillers were ordered on the specific recommendations of the Special Branch. In none of the cases of political workers, members of banned organisations, or anti-national elements, was the decision taken at the level of the District Magistrate.

19.224 Resort to MISA was taken only after receipt of the orders from the Government of India banning certain organisations. The earliest detentions ordered in July 1975 were in respect of members and associates of RSS and Anand Marg. No detention under MISA was ordered in Meghalaya after 26th August, 1976.

19.225 All the ten detention orders issued by the District Magistrates were confirmed by the State Government. Four-monthly review was conducted by a State level Review Committee constituted in accordance with the instructions issued by the Ministry of Home Affairs on October 10, 1975 as under:—

The Chief Minister	Chairman
Chief Secretary	Member
Secretary (Home & Political)	Member
DIG Special Branch CID	Member
Deputy Director, SIB, Shillong	Member
Secretary (Law Department)	Member
Collector of Customs	Member

This Committee held 10 sittings between November 4, 1975 and January 15, 1977. Proceedings of these meetings show that the cases of detention due for review were considered individually and the representations were examined in the light of the guidelines set out by the Government of India. The review was conducted on the basis of recommendations of the Special Branch regarding the continued detention of each detenu. It has also been seen that the Special Branch invariably used to call for a report from the SP concerned.

19.226 As many as 16 persons out of the total of 39 detained under MISA, were released much before the revocation of emergency as a result of the recommendations of the Review Committee. This number included 6 RSS detenus, 2 political detenus and 2 Bangladesh nationals. In some cases which come under political category, the Committee recommended grant of parole to the detenu concerned and the District authorities were directed to watch their activities and sent reports for consideration at the time of the next review.

19.227 Detention of 6 persons detained under MISA for illicit distillation was reviewed by the State level Committee five times. In the meeting on November 4, 1975, the Committee decided to obtain from the Excise Department particulars regarding the volume of illicit distillation, the quantity of rice diverted as a result of this activity and the period over which these activities were carried on. One of the detenus, namely, Smt. Ka Kwin Malngiang, who was keeping a four-month old baby with her in Jail, was released on February 18, 1976 as a result of consideration of her case on compassionate grounds by the Committee on December 16, 1975. The remaining detenus of this category were released in phases determined by the magnitude of their offences.

19.228 There were occasions when the recommendations of the Review Committee were turned down by the Central Government. In its first meeting held on November 4, 1975, the Review Committee recommended the release of S/Shri Raj Kumar Bhattacharjee, Shekhar Ranjan Das, Kumud Bandhu Bhattacharjee and Ratan Lal Saraf all of RSS. Shri Raj Kumar Bhattacharjee was recommended for release keeping in view his age and failing health. Others were recommended for release on the basis of the undertaking given by them to dissociate themselves from activities of the RSS and to support the then Prime Minister's programme. A letter was written to the Government of India on November 26, 1975 seeking their approval for issuing the revocation orders. The Government of India, vide their letter of 23rd December, 1975, agreed to the release of Shri Raj Kumar Bhattacharjee and Shri Ratan Lal Saraf only and they were released accordingly on January 7, 1976. Shri Shekhar Ranjan Das and Shri Kumud Bandhu Bhattacharjee continued in detention till March 21, 1977.

19.229 Scrutiny of files has revealed that the State Government had followed a liberal policy in matters relating to the grant of parole. Only in respect of the persons detained for reasons of security of State and on espionage charges, the facility of release on parole was not given. Applications received from or on behalf of the detenus in this regard were sent to the State Special Branch for enquiry and recommendations. Invariably the Special Branch used to consult the District SP concerned before making recommendations. Release on parole appears to have been granted entirely on the recommendations of the Special Branch which used to be considered by the Review Committee. A scrutiny of files reveals that the Government had followed a very humane attitude in this matter and even the members of the banned organisations were not deprived of this facility, whenever requests were found to be genuine. Some detenus were released on parole without any formal requests from them. This was done following the consideration of their representations against the detention and in view of their undertakings that they would not indulge in any prejudicial activities. It is also seen that whenever a person was released on parole, the question of extension of parole was considered by the Review Committee and extensions were granted from time to time. As such, a large number of persons released for a specified period in the first instance had remained on parole until

their detention orders were revoked. A few illustrative cases are given below :—

- (i) Shri Lila Ram, an RSS detenu, detained on March 31, 1976, was granted three months' parole on August 6, 1976 on health grounds. It was extended thrice and he remained on parole until the detention order was revoked on March 21, 1977.
- (ii) Shri Ratan Kumar Palit, another RSS detenu, detained on August 20, 1975, was released on parole for three months in August 1976 and remained on parole until the order was revoked on March 9, 1977.
- (iii) Shri G. Mawthoh, a political detenu belonging to the Congress Party, detained on August 4, 1976, was granted four months' parole on August 19, 1976, and had remained on parole until the detention order was revoked on January 17, 1977. He had actually been under detention for 15 days or so.
- (iv) Another political detenu, Shri M. N. Majaw of Hill State People's Democratic Party, detained on September 18, 1975, was released on parole for six months on August 19, 1976 and the detention order was revoked on January 7, 1977 before the expiry of the period of parole.
- (v) The case of Shri Chanchal Majumdar, a student detenu of RSS, will further show that the State Government was considerate in the grant of parole to MISA detenus. He was detained on December 21, 1975. He was granted three months' parole on August 16, 1976 to enable him to prosecute his studies. His request to allow him to go to Tura during the period of parole was also accepted. He was also allowed to take admission in the Government College, Tura, during the period of parole. He was released on October 13, 1976, before the expiry of the period of parole.

NAGALAND

19.230 In reply to the Commission's questionnaire, the Government of Nagaland has supplied the following figures of arrests and detentions made in Nagaland during the period of emergency :—

MISA	92
COFEPOSA	Nil
DISIR	4

19.231 The scrutiny of MISA files of Nagaland has, however, revealed that 95 persons, and not 92, were detained under MISA. Though according to the information supplied by the State Government, only 39 detentions were ordered under Section 16A, scrutiny has shown that all the detentions were ordered by invoking this Section. This has also been confirmed by the State Government, vide their wireless message No. CON/204/77, dated July 21, 1978.

19.232 Categorywise break-up of MISA detentions is given below :—

(i) Members or Associates of banned organisations	Nil
(ii) Members or Associates of Political Parties	9
(iii) Others	86

19.233 The third category includes 25 alleged economic offenders, but mainly comprises persons detained for reasons of the security of State, viz., supporters of the underground Naga movement, opponents of Shillong Agreement of November, 1975, between the Government of India and Naga hostiles, cases of attempted hijacking/ex-filtration and persons caught returning from or trying to go to China.

19.234 21 persons mainly from the business community were detained allegedly for economic offences, such as, blackmarketing and hoarding of foodgrains, violation of orders regarding display of stock and prices of essential commodities and evasion of sales-tax.

19.235 As intimated by the State Government in reply to the questionnaire on "Circumstances leading to the Emergency and Arrests/Detentions", powers under MISA were not used at all to deal with the Opposition political parties until April 1976, when the first political detention in respect of Shri Azu Newamai ex-Deputy Minister, was ordered on April 5, 1976. Only 9 political workers including 8 of United Democratic Front, were detained under MISA. Powers under MISA were not used to deal with the members of the banned organisations. Four members of Anand Marg were, however, arrested under DISIR in July 1975.

19.236 A scrutiny has revealed some unique features in the detentions ordered in Nagaland during the emergency. Though all the 95 persons were detained under MISA making use of the emergency provisions of the Act contained in Section 16A, no separate declaration as contemplated by this Section was made by the detaining authorities. It was mentioned in the detention order itself that the detention of the person concerned was considered necessary for effectively dealing with the emergency and as such grounds of detention were not being communicated. Declaration under Section 16A of MISA cannot form part of the detention order issued under Section 3 of the MISA and is required to be issued separately in the prescribed form. This legal requirement does not appear to have been satisfied in the cases of detention in Nagaland.

19.237 It has also been observed that the detaining authorities, particularly the DC, Kohima, were not forwarding the grounds of detention to the State Government which was required to review the declaration made by the DCs and confirm the detentions ordered in the interest of emergency. This is evident from a noting of Shri K. S. Puri, the Home Secretary,

dated September 24, 1975, directing the Under Secretary (Political) to issue instructions to all the DCs to send the grounds of detention within one week of detention. It is seen from several files that the Government was finding it difficult to review the detentions ordered by DC, Kohima, within the stipulated period of 15 days for want of grounds of detention.

19.238 Detention of economic offenders also presents a unique pattern. DC, Kohima, had issued detention orders in respect of 21 persons of this category. The grounds of detention in each case refer to a single incident or transaction. Thirteen orders were revoked by the DC himself before the cases came up for review by the State Government. Seven cases were rejected by the State Government as the orders were not found fit for confirmation. Only one detention was confirmed and the detenu, named Shri Rafiquidin, remained under detention for about five months.

19.239 Given below are some of the cases of detention under MISA ordered in Nagaland during the period of emergency :—

(i) Shri Douhou G. B. (village Chief) was detained on December 6, 1976, on the basis of a letter written by one Shri Lhoukuole, alleged to be a person of unsound mind, to Shri J. B. Jasokie, the then Chief Minister, Nagaland, saying that Shri Douhou had asked him, over a drink, to kill the Chief Minister. He alleged that his refusal to oblige Shri Douhou had infuriated the latter who had used his influence to get him admitted to jail as a lunatic. Shri Douhou appears to have been detained on the basis of interrogation of Shri Lhoukuole conducted by the Magistrate First Class, Kohima, on December 3, 1976.

(ii) Shri Sohan Lal Sharma and Shri Darulie Karos were detained under the orders of District Magistrate, Kohima, dated September 6, 1975. File shows that Shri M. Ramunny, Adviser (Development) and Special Secretary to Governor, had written to the DC, Kohima, on August 29, 1975, directing him to contact a raid on the premises of M/s. Maithou to verify whether the stock of 921 bundles of CGI sheets released from TISCO for Nagaland were collected by the firm and brought to Dimapur. Accordingly, a raid was made by Extra Assistant Commissioner, Kohima on September 3, 1975 and not a single bundle of CGI sheets out of 100 metric tonnes allotted to M/s. Maithou and party in January, 1975, was found during the raid. It was learnt that Shri Maithou was a minor and his father Shri Darulie was conducting the actual deal. Shri Darulie mentioned to the Extra Assistant Commissioner that Shri Sohan Lal Sharma was also associated with him in this transaction. Detention orders in respect of Shri Sohan Lal Sharma and Shri Darulie were, therefore,

issued on September 6, 1975, apparently on the suspicion that the firm had collected the material and disposed it of at Calcutta, depriving the State of Nagaland of its allotted quota of CGI sheets. The file shows that detention order in respect of Shri Sohan Lal was revoked on September 8, 1975, by the DM, Kohima on the basis of an application from Shri Darulie that Shri Sohan Lal had nothing to do with this matter. The firm wrote to the DC requesting for the release of Shri Darulie on parole to enable him to go to Calcutta. DC forwarded his case to the State Government recommending grant of parole for 21 days and revocation of the detention order, if allotted quota of 100 metric tonnes was collected and brought to Nagaland. File shows that the Home Department wrote to the DC on September 24, 1975, to the effect that the period of 15 days had already expired and a full report regarding the grounds of detention was still awaited from him. The Government, therefore, ordered the release of the detenu. This case also shows that the statutory requirement of review of the declaration within 15 days from the date of order was not strictly adhered to. The order of the DM, dated September 6, 1975, had ceased to have any legal validity after September 21, 1975, for want of the confirmation of the declaration by the State authority.

- (iii) Shri Nozo Angami and 9 others were detained under the orders of DC, Kohima, dated October 8, 1975, for their failure to display the stock position and prices of essential commodities and selling the items on higher rates. No specific details in support of these allegations were given in the grounds of detention. On October 13, 1975, the DC, Kohima, was directed by the Home Department to send grounds of detention which he had not forwarded till then. He wrote to the Home Department on October 18, 1975, stating that these persons were detained with the object of creating a deterrent effect on the traders and businessmen dealing in essential commodities. He further said that after realising that their continued detention was no longer necessary, he had revoked the detention orders and had ordered action under normal law.
- (iv) Shri Jhuman Lal Sarowji and his two sons, Shri Lakshmi Narain and Shri Lalit Kumar of M/s. Sarowji Hardware Stores, Dimapur were detained under the orders of DC, Kohima, dated September 1, 1975, on the ground that they had allegedly cheated the Government of Nagaland during February, 1972, by not depositing the Central Sales Tax and Nagaland Frontier Tax amounting to Rs. 91,500. It was mentioned that these persons were habitual evaders of payment of Government dues without specifying any other instance except the one mentioned above.

File shows that the DC, Kohima, revoked the detention orders in respect of Shri Lalit Kumar and Shri Lakshmi Narain on September 5, 1975, on the ground that further inquiries had revealed that Shri Lalit Kumar was a minor and his guardian Shri Lakshmi Narain had not "signed anywhere in the course of any transaction".

The State Government reviewed the case on September 13, 1975, in the Review Committee meeting and it was recorded that "evasion of sales-tax cannot amount to a prejudicial act. It will also not come under the category of Maintenance of Supplies & Services Essential to the Community". In accordance with the recommendations of the Review Committee, the detention of Shri Jhuman Lal was not confirmed.

19.240 A State level Review Committee with Chief Secretary as Chairman and Commissioner, Nagaland, and Secretary, Law, as members, used to meet for considering the confirmation and for monthly review of MISA cases. Detention order issued by the District Magistrates were confirmed on the recommendations of this Committee. It has been reported by the State Government that 7 cases of detention ordered by DC, Kohima, were not confirmed by the Government. In as many as 45 cases, since the DC had revoked the order within 15 days of detention and the persons concerned had been released, the cases were not referred to the State Government even for confirmation.

19.241 Most of the detenus whose detentions were confirmed by the State Government in the first instance, remained under detention until the emergency was lifted. In a very few cases, detenus were released as a result of four-monthly reviews. Only one political detenu, named Shri Azu Newmai, ex-Deputy Minister, UDF, detained on April 5, 1976, was released on July 19, 1976, as a result of review of his case. One Shri Refiquaddin, an economic offender, and Shri Lhouthia Angami, an anti-social element, were released on February 4, 1977, as a result of review of their cases in December, 1976. The rest of the detenus were released only after the revocation of the emergency.

19.242 In reply to the questionnaire on 'Treatment in Jails', the State Government has stated that no detenu was refused parole sought on the ground of death in family or marriage of a dependant or serious illness of a family member. At the time of the scrutiny of the MISA cases, the officer of the Commission did not come across in the files any application for parole from the detenus. Under the circumstances, it has not been possible to say whether or not parole applications were received and, if so, how they were dealt with.

ORISSA

19.243 According to the information furnished by the Government of Orissa, the number of persons

arrested/detained under various Emergency Laws was as under :—

MISA	408 (under Section 16A of the Act)
COFEPOSA	3
DISIR	762

19.244 Categorywise break-up of persons detained under the MISA is as under :—

(i) Opposition Parties	141
(ii) Banned Organisations	112
(iii) Anti-social elements and criminals	155

The BLD and the RSS topped the list of Opposition parties and banned organisations, with 55 and 57 detentions, respectively. Of the arrests under DISIR, 50 were for alleged economic offences and 279 for alleged anti-social activities.

19.245 The following instructions were issued by the State Government on June 26, 1975 regarding detentions under MISA :—

“Some leading agitators may have to be taken into preventive custody. Special Branch is preparing the district-wise list of such persons and the list will be sent to the District SP with instructions regarding timings of action. These persons should be detained under MISA keeping in view the objective of prevention of violent activities.”

In their reply to the Commission's questionnaire on the subject, the State Government have revealed that after consultations at the Government level, a list of 13 persons required to be detained was prepared on June 30, 1975. The State Government have further mentioned in their reply :—

“Apart from the lists mentioned above, the Special Branch prepared a list of persons to be detained from time to time on the basis of instructions communicated in the State Government's Secret message No. 2638(37)/C, dated 26-6-1975. Cases of persons whose detention was considered necessary by the Special Branch were referred to the District Superintendents of Police with information relating to such persons as was available with the Special Branch, for taking up the question of their detentions with the concerned authorities.”

19.246 State Government in their reply to the questionnaire on detentions have informed as below :—

“Instructions were issued to all District Magistrates and other concerned authorities on 22-7-1975 to the effect that the powers of detention under MISA should be exercised

with due care and circumspection and detention should not be resorted to flimsy, vague, non-existent or irrelevant grounds or on outdated information. These instructions further envisaged that while each proposal for detention should be scrutinised on merits, in the prevailing circumstances the MISA could be liberally used for detention of blackmarketeers, hoarders, etc., and activists of organisations banned under the Rule 33 of the DIR. Even in such cases of aforesaid instructions suggested a selective approach.

The Additional Chief Secretary to the Government issued another circular to all District Magistrates explaining the special responsibility that has been cast on the administration by the proclamation of emergency. The circular also cautioned against any temptation to exploit the emergency situation for one's personal gain or to settle old scores or to intimidate or blackmail the unwary or the innocent. It further emphasised that the Government will not hesitate to meet out exemplary punishment to the erring officials.”

19.247 The State Government has further informed that in February, 1974, instructions were issued directing the District Magistrates to informally consult the Divisional Commissioner before making an order of detention under the MISA and in exceptional cases where order was required to be passed immediately, the District Magistrate should forward copies of all concerning papers to the Commissioner. Even though this circular was issued prior to the declaration of emergency, arrangements envisaged in the circular remained in force during the emergency. During the emergency, there were only 2 cases in which the Divisional Commissioner did not recommend the approval of the detention orders. The scrutiny of files also revealed that in many cases the report of the Divisional Commissioner did not reach the State Government before the detention orders were confirmed.

19.248 Orissa was one of the few States where a thorough scrutiny of the grounds of detention and of the orders passed by District Magistrate was carried out in the Home Department, before submitting the file to the Chief Minister for final orders. Legal and procedural flaws as well as inadequacy or irrelevance of the grounds of detention was duly pointed out but almost invariably at the end of the scrutiny note, a recommendation was made to confirm the detention on administrative grounds or grounds of expediency and detention order was confirmed by the Chief Minister. In many cases, the scrutiny note clearly pointed out that the grounds of detention would not stand legal scrutiny and no valid detention order can be based on such grounds. Yet in the end, confirmation of the order was recommended and detentions were confirmed. The practice of revoking detention orders passed by the District Magistrate which were found to suffer from serious legal flaws and issuing fresh detention orders in place of the initial orders was not followed in this State.

19.249 In the case of Shri Abir Padhi, District Behrampur, detained on July 3, 1975, on the grounds of instigating Class IV employees to agitate against the Government, collecting funds for JP movement in March 1975 and publishing false news through his newspaper 'Praja Tantra' of which he was a correspondent, the Home Department noted as below :—

"It will not be possible to sustain a legal order of detention on the basis of grounds furnished by the DM. Many of the grounds are vague and some of these are also irrelevant... nonetheless, the grounds of detention show that the detenu has considerable agitational potential and mischief value...in view of this, it may be expedient to approve the order of detention."

His detention was confirmed.

19.250 In the case of Shri Madan Mohan Sahu and Shri Binod Mohanty, both of District Cuttack, detained on the ground of participating in Shri Jayaprakash Narayan's programme and meetings in 1974, the Home Department pointed out that some of the grounds did not indicate any prejudicial activity and cannot be utilized for purposes of detention. Grounds were not specific and precise to justify detention. But confirmation was recommended on the grounds of expediency. The detention was confirmed. In the case of Shri Ram Krishan Patnaik of District Ganjam, detained on July 10, 1975, the grounds mentioned that he was a militant leader of the BLD and was criticising the levy policy in public meetings. In this case, the DM failed to send his report to the State Government as required under Section 3(3) of the MISA. The Home Department noted :—

"No valid detention can be made on the basis of allegations mentioned in the grounds. However, the grounds do indicate that the detenu has considerable agitational potential and is likely to act in pursuance of party directives."

Shri Satish Kumar Dhawan of District Cuttack was detained on March 6, 1976 on the grounds that he was an authorised wholesale dealer in cement and MS rods. On checking of his stock, shortage of material was detected. In this case, the District Magistrate did not send to the State Government the copy of detention order and declaration under Section 16A(3) issued by him and merely intimated them of the fact of detention of Shri Dhawan. The Home Department noted :—

"DM has not forwarded copy of detention order; as such it is not possible to know the provisions of MISA under which he has been detained. Presumably, he has been detained under Section 3(1)(a)(3). Since the order was made apparently on July 10, 1975, the Government have to consider the approval today and it would not be possible to wait for the wanting document."

His detention was confirmed.

19.251 Majority of persons detained due to their political affiliations and activities belonged to the BLD. A number of Sarvodaya workers and those connected with the Lok Sangharsh Samiti movement of Shri Jayaprakash Narayan in 1974 were also detained. The grounds given in such cases mostly related to their participation in meetings, agitations, etc., during the year 1974 and in early months of 1975. But in very few cases, any definite activity near-about or after the proclamation of emergency was mentioned. In some cases, one or two secret meetings were mentioned in the grounds, in which the detenu was alleged to have participated and it was mentioned that in such meetings it was decided to oppose the emergency and launch an agitation. But very often, no details of the actual time and place of such meetings were given in the grounds. (Cases of S/Shri Subhash Chandra Joshi and Manmohan Chaudhary, both of District Cuttack).

19.252 31 students were detained under MISA during emergency. In majority of cases, the grounds mentioned their association with the JP movement in 1974. A few were detained simply on grounds of being rowdy and having indulged in acts of indiscipline in the educational institutions during the past two or three years.

19.253 As regards banned organisations also, a procedure identical with the one adopted for detaining persons with political affiliation was followed. In a majority of cases, the grounds mentioned that the detenu was associated with the banned organisation and had participated in one or two secret meetings in which emergency was opposed. Shri Sitaram Das Babaji, District Ganjam, was detained on August 7, 1975. The grounds of detention only mentioned that he was connected with the RSS. He had earlier been arrested under the DISIR and was in jail. The Home Department noted in his case that as he was already in jail, this point will have to be answered in case of judicial query but as he is an active member of RSS, his detention may be confirmed. S/Shri Bhima Behra, Chandrakant Harkare and Raghunath, all of District Phulbani, were detained on the grounds that they belonged to the RSS. In each case, only one single incident was cited in which the detenu was found making propaganda against the emergency and inciting people to oppose the Government, at a bus stand, on a particular day.

19.254 Like other States, MISA was also used here to detain criminals involved in petty offences like assault, street brawls, "eve-teasing", etc. In some cases, grounds revealed only one incident of such activity and mostly no conviction for any offence was shown. Shri Mungeli Aggarwal, District Bolangir, was detained on August 23, 1975, on the basis of a single incident of illegally transporting 10 quintals of rice on August 17, 1975. S/Shri Kulamoni Paridha and Sahdev Naik, President and General Secretary, respectively, of Ichhapur Service Cooperative Society, were detained on September 4, 1975 on the ground of serious irregularities in the accounts of Society and recovery of adulterated fertilizers from the

Society godown. In their cases, the Home Department noted :—

"There is no proof that the stock was meant for sale. During the search, the stock-book should have been verified to find out what stock was meant for sale. In the absence of such an evidence, the grounds are weak and may not stand the test of judicial scrutiny. But in view of the *prima facie* evidence that the stock was for sale, the detention should be confirmed."

19.255 The State Government constituted two separate Review Committees for periodical review of detention cases. The Review Committee constituted for reviewing the cases of persons detained in connection with the maintenance of public order and security of State comprised the following members:—

- (i) Additional Chief Secretary/Chief Secretary — in charge of Home Department
- (ii) Home Secretary
- (iii) IG Police
- (iv) DIG (Intelligence)

19.256 Another Review Committee was constituted for dealing with cases of detention in connection with the maintenance of essential supplies and services. In this Committee, Secretary, Food & Civil Supplies Department and DIG (Vigilance) were also associated as members.

19.257 The recommendations of these Review Committees regarding the continuation or revocation of detention orders were put up before the Chief Minister for final orders. It was noticed that in a majority of cases, the Chief Minister accepted the recommendations of the Review Committees.

19.258 In reply to the Commission's questionnaire on detentions, State Government have mentioned:—

"The State Government did not approve 44 detention orders made by different detaining authorities under MISA. Of these, reason for non-approval in 8 cases was that the reference to the Government for approval of detention orders and confirmation of declaration under Section 16A(3) of MISA was received after expiry of the statutory period within which the State Government is required to consider the question of approval or confirmation. Of these 8 persons, 7 persons were subsequently re-detained on the basis of fresh detention orders."

19.259 All applications for parole were submitted to the Chief Minister for orders. On receipt of application for grant of parole from the detenus or their relatives, the opinion of concerned District Magistrate and Intelligence Branch were called for. This resulted in delay in some cases. In the case of Shri Dhanmal Jain, District Balasore, parole was requested for attending the last rites of his uncle who had died on April 16, 1976. After calling for the report of DM, which was favourable, the case was put up

before the CM on April 21, 1976. On April 26, 1976, the Chief Minister returned the file with the remarks "that since his uncle had died on 16th, what rites could be performed now"? Home Department again recommended that parole should be granted to the detenu for the purpose of consoling his relatives. This was approved by the Chief Minister on May 3, 1976. Thus, parole was granted 15 days after the death of a near relative. In the case of Shri Gurcharan Das, District Cuttack, parole was requested on March 12, 1976, on the ground that the detenu's aged father was ill and his mother had fractured her leg due to a fall. DIG (Int) reported that the facts of illness of father and fracture of mother were both true and recommended grant of parole, but the Chief Minister ordered that the issue must be considered after a fortnight. Later, the DIG was asked to verify whether there were other members in the family, able to look after the parents of the detenu. On June 1, 1976, the Home Department put up a note that now there was no urgent need for granting parole as the detenu's mother is the only sick person.

PUNJAB

19.260 According to the information supplied by the Government of Punjab, the figures of arrests and detentions in Punjab during the period of emergency are:—

MISA	440
COFEPOSA	73
DISIR	2,423

19.261 The scrutiny of MISA files of Punjab has revealed that 438 persons were actually detained and two had remained absconders. 332 of these were detained under normal provisions of MISA. This included 321 foreigners (276 Pak nationals and 45 Bangladesh nationals) and 5 Indian nationals detained for the reasons of security of State. The foreigners were detained with a view to making arrangements for their expulsion from India. The State Government rejected 7 cases and two were rejected by the Advisory Board. 323 detentions were upheld by the Advisory Board.

19.262 106 persons were detained in the context of the emergency by invoking Section 16A of the MISA. The categorywise break-up of these cases is given below:—

- (i) Members or Associates of Banned Organizations 16 (CPIML—13. Anand Marg—3)
- (ii) Members or Associates of Political Parties 33 (BJS—14. Socialist Party—6. Congress (R)—2. Akali—9. Others—2).
- (iii) Others 57

The third category includes alleged spies, smugglers, gamblers, rowdies and other anti-social elements.

19.263 It has been intimated by the State Government that the intimation about the impending imposition of emergency was received by the then Chief Minister of Punjab on the night of June 25, 1975, and a meeting was held at his residence at about midnight to discuss the situation. Telephonic instructions were issued by the Inspector General of Police to all District Superintendents of Police during the night of June 25/26, 1975, directing them to effect preventive arrests and prevent formation of any crowds or processions likely to lead to violence or other prejudicial activities. These instructions were confirmed later by a TP message on June 26, 1975. It has been reported by the State Government that 91 persons were arrested on June 26, 1975, and 416 during the period from June 27 to June 30, 1975 under the preventive provisions of IPC, Cr. PC and DISIR, etc. No detentions under MISA were made till July 5, 1975.

19.264 Bhartiya Jan Sangh among the political parties and the CPIML among the banned parties appear to have faced the brunt of MISA in Punjab. There were no public servants, school/university teachers, or women among the detenus. Six students were detained on account of their alleged association with the CPIML. There was one journalist named Shri Jagat Narayan of Jullundur, an ex-Minister, among the detenus. Scrutiny has revealed that most of the political detenus were arrested first under the preventive sections of Cr. PC or DISIR and then detained under MISA.

19.265 Detention of S/Shri Som Dutt and Bachan Singh Pakhon, both of Congress, is noteworthy. They were detained under the orders of District Magistrate, Sangrur, issued on December 26, 1975. Shri Som Dutt was arrested on February 15, 1976, and Shri Bachan Singh on February 17, 1976. It was mentioned in the grounds of detention that they were arrested under Rule 36(43) DISIR on November 25, 1975, allegedly for addressing a public meeting near new cinema, Barnala, where they had allegedly criticised the Government and exhorted the audience to resort to violent methods to overthrow the Government. They were released on bail in this case on December 9, 1975. It was further mentioned in the grounds of detention that as per the report of Sub-Inspector Gurdial Singh, Shri Bachan Singh held a secret meeting of his supporters on December 24, 1975, and Shri Som Dutt on December 26, 1975, where they had criticised the Government for imposing emergency in the country. The State Government confirmed both the detention orders on January 9, 1976. Though the detention orders were issued on December 26, 1975, they were actually arrested only on February 15 and 17, 1976. Whether or not the individual against whom the detention order is passed is actually detained, the law requires the confirmation of the order by the State Government within a period of 15 days from the actual date of issue of the detention order. They sent a petition to the Prime Minister alleging that they were detained at the instance of Shri Onkar Chand, General Secretary of the Punjab Pradesh Congress Committee and the Government of India wrote to Punjab Government on February 10, 1976, calling for their comments. The State Government replied on May 12, 1976,

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justifying the detention of these persons. File shows that Shri Om Mehta, the then MMHA, wrote semi-officially to Giani Zail Singh on July 31, 1976, that:—

"A petition regarding the detention of Shri Som Dutt Sharma, member, Punjab Pradesh Congress Committee and Secretary, Mandal Congress Committee, Barnala and Shri Bachan Singh Pakhon, ex-MLA, was received by me which was sent for a report to the Government of Punjab. The report received from your Home Secretary reveals that S/Shri Som Dutt and Bachan Singh were arrested under MISA on 15th and 17th of February, 1976, respectively. The only overt act reported against them immediately prior to their arrests is the meetings held at their residence between 24th to 26th December, 1975, wherein they are reported to have criticised the Government for suspension of civil liberties. As both of them are members of the Congress Committee and they have no political affiliation, it appears doubtful that they would be holding meetings at their residences to criticise the Government. According to information available in the Ministry, both the detenus are opposed to Shri Onkar Chand, General Secretary of the Punjab Pradesh Committee and they have threatened to distribute pamphlets in the AICC session to demand for his removal if no action was taken against him. It is reported that on the same day, i.e., 25th November, 1975, both S/Shri Sharma and Pakhon were arrested under DISIR for alleged criticism of the emergency in the public meeting before a cinema hall at Barnala. According to our information, they were falsely implicated in this case because of their opposition to Shri Onkar Chand.

In view of the above, it appears that there has been a misuse of emergency powers. We would, therefore, advise you to revoke the detention orders in respect of both these detenus. I shall be grateful if you will kindly look into the matter personally and take deterrent action against those guilty of misuse of emergency powers."

The cases were discussed in a special review held on August 16, 1976, and orders were revoked on August 17, 1976. DIG, Patiala was asked to look into the matter and take action against SP, Sangrur. It is seen from the file of Shri Som Dutt that DIG, Patiala wrote to the Home Secretary on August 12, 1977, in this connection and quoted the following remarks of his predecessor recorded on July 25, 1977:—

"I have discussed this case with DIG/CID on 20-7-77. No action will be taken."

19.266 All the detention orders issued under Section 16A were required to be reviewed by the State Government for the purpose of confirmation within 15 days. Cases were processed in the office of the DIG/CID. Scrutiny has revealed that the cases were got legally scrutinised first by the Law

Officer attached with the DIG/CID and then by the Deputy Director, Prosecution and Litigation. It has been reported by the State Government that 46 detention orders out of a total of 108 issued by the various District Magistrates under Section 16A were not confirmed by the State Government. The following illustrations will reveal the nature, scope and effectiveness of the scrutiny carried out at the level of the State Government:—

- (i) Shri Ashok Kumar, son of Shri Lakshman Das was detained under the orders of District Magistrate, Sangrur, passed on February 19, 1976. It was mentioned in the grounds of detention that Shri Ashok Kumar was arrested in a case under Rule 36/43 DISIR for making anti-Government utterances on October 14, 1975. He was allegedly found inciting the public against the Government on January 4, 1976 and January 17, 1976. The case was examined in the Home Department and Shri Mela Ram Midha, Deputy Director (Prosecution & Litigation) recorded the following note on February 27, 1976:—

“The detenu has been inciting the public against emergency and the present Government. He is not shown to be belonging to any political party. The aforesaid activities could not in themselves be sufficient to show that his activities were prejudicial to the maintenance of public order or security of State. No doubt in the report it is stated that on 17-1-76 he had exhorted the gathering to resort to violence to overthrow the present Government, but he being not a member of any Party, his exhortation could have no effect. Besides from the note of Additional I.G., it is evident that the detenu is an opium smuggler and the correctness of the acts attributed to him is doubtful. Under these circumstances, it is not a fit case where the State Government may confirm the declaration made by the DM, Sangrur.”

The DM was informed on March 1, 1976, that the declaration issued by him in this case was not confirmed by the State Government.

- (ii) Shri Balwant Singh Ramuwalia, son of Shri Karnail Singh was detained under the orders of District Magistrate, Faridkot, on September 7, 1976. The grounds of detention referred to one incident of August 1, 1975, one of August 2, 1975 and one of August, 6 1975 relating to the detenu's criticism of the Government and the 20-point economic programme. Shri Mela Ram Midha, Deputy Director (Prosecution & Litigation) recorded the following note on September 21, 1976:—

“The perusal of the grounds of detention would show that the prejudicial activity relates to the period 1-8-75 to 6-8-75.

No further activity has come to light against this detenu. A period of more than one year has elapsed since the last detected activity, the same are of course remote in time. Besides, the perusal of the grounds for detention would reveal that the detenu has only been criticising the promulgation of emergency, banning of certain political parties and he described the Prime Minister as corrupt and that the promulgated emergency only to save her position as Prime Minister. He further criticised the arrest of certain political leaders. There is, however, nothing in the grounds to show that he ever incited people to take the law into their own hands and to change the present duly elected Government by force. No doubt on August 1, 1975, he remarked—“We are breaking the Emergency”, there is nothing to show that it was intended to be broken by use of force. Again on 1-8-75, he incited people to overthrow the Government but there is no incitement to the use of force or to create conditions where the public order may be jeopardised. The grounds are, therefore, not relevant to the object to be achieved. These activities are not such as could be termed to be prejudicial to the maintenance of public order. Under these circumstances, the detention could not be justified and as such it is not a fit case in which the State Government may confirm the declaration.”

The DM was informed on September 22, 1976, that the detention order issued by him was not confirmed.

- (iii) District Magistrate, Bhatinda, issued on September 19, 1975, detention orders in respect of 10 persons described as opium smugglers in the records. The grounds of detention only referred to 2-3 meetings where these persons were alleged to have made anti-Government utterances. The cases were examined in the Home Department. Shri Mela Ram Midha, Deputy Director (Prosecution & Litigation) recorded on September 30, 1975, that:—

“In all these 10 cases, it is alleged that meeting was held in which besides the detenu some other persons also participated and the detenus exhorted them to revolt against the Government, gherao the Ministers, to collect funds to support the agitation and if the funds were not voluntarily provided, the same should be forcibly collected. It is further mentioned that on the next day of the meeting, the detenu along with others asked shopkeepers to close the shops and forced them to provide funds. At that time, it is alleged that the detenu and his companions were holding

knives whereon Rehriwalas and the vegetable sellers ran hither and thither and the detenu and his companions were brandishing knives and lathis, etc. These allegations, if proved, indicate the commission of a criminal cognisable offence in which the case should have been registered by the police. The record does not show if any such case was registered. The omission on the part of the police to register the case creates doubts about the correctness of these allegations. Besides, there is absolutely no material to show that the detenus indulged in other prejudicial activities. At any rate, the detenus are not shown to be persons of such a stature that their instigations could be effective with the people in general. In these circumstances, these are not fit cases in which the extraordinary amended provisions of MISA, 1971 should have been availed of by making a declaration under Section 16A of the said Act. These are, therefore, not fit cases in which the State Government may confirm the declaration under Section 16A."

The orders were not confirmed and the DM was informed accordingly on October 1, 1975.

- (iv) Shri Bhagwan Das son of Shri Jiwa Ram Agarwal, an alleged leader of Darra Satta gamblers, was detained under the orders of District Magistrate, Patiala, issued on July 15, 1976. It was mentioned in the grounds of detention that his activities were curbed by the police but with a view to revive the same, he along with other bad characters had taken a "decision to organise the campaign to detract the armed forces and policemen away from their duties and to overthrow the present Government." Shri Mela Ram Midha, Deputy Director (Prosecution and Litigation), recorded on August 2, 1976, that:—

"He is not a political leader and is not shown to be a person having such an influence so as to detract the police from their normal duties. He is also not shown to be so desperate that his activities may prejudice the security of State or maintenance of public order. Darra Satta is not relevant under the provisions of MISA. It is, therefore, not a fit case for detention and the question of detention being necessary for effectively dealing with the Emergency does not arise. It is, therefore, not a fit case where the State Government may confirm in declaration made by the DM, Patiala."

Shri J. S. Bawa, the Additional IG/CID recorded on July 30, 1976 that:—

"Strictly speaking, the activities involving Darra Satta do not *per se* come

within the purview of MISA. Furthermore, it is also to be considered if persons indulging in such activities are to be detained by issuing declaration under MISA. It is not recommended that the declaration in this case may be approved by the State Government. The correct position will be pointed out to DM, Patiala who will also be asked to deal stringently with the Darra Satta gamblers in accordance with the appropriate provisions of law."

The order was, therefore, not confirmed by the State Government.

19.267 Four-monthly reviews of the MISA cases were held in the Home Department. Scrutiny has revealed that the recommendations of the detaining authority were obtained in each case and the cases were processed in the office of the DIG/CID. It has been reported by the State Government that a special review of MISA cases was held on August 16, 1976, by a committee consisting of the Home Secretary Additional IG/CID, Deputy Secretary (Home) and SP, Security, CID. It was decided to release S/Shri Som Dutt and Bachan Singh Pakhon as advised by the Central Government. Five more detenus were also considered for release after reviewing their cases in the light of the assurances given by them for their good behaviour. The following cases are noteworthy:—

- (i) Shri Om Prakash Goyal of BJS was detained on July 18, 1975, under the orders of District Magistrate, Faridkot. His case was reviewed on August 16, 1976, and the DM, Faridkot was asked to make enquiries and send report regarding the withdrawal of Shri Goyal from the prejudicial activities. DM forwarded a petition, dated October 18, 1976, from Shri Om Prakash Goyal and confirmed that there was change in the thinking of Shri Goyal. Shri Goyal had in his petition stated that he had dissociated himself from the BJS and had full faith in the 20-point programme of the Prime Minister and the 5-point programme of the "Lok Neta Sanjay Gandhi". It was decided to release Shri Om Prakash Goyal and Government of India was requested on November 22, 1976, to accord approval for the same. The Government of India replied on February 1, 1977, advising the State Government to review the case in the light of the fresh instructions issued in January, 1977, regarding the release of political detenus. Detention order in respect of Shri Goyal was revoked on February 4, 1977.

- (ii) Shri Panna Lal of BJS was detained on February 27, 1976, under the orders of District Magistrate, Gurdaspur. He sent a petition on October 16, 1976, affirming his dissociation from the BJS and support to the Economic Programme launched by Smt. Indira Gandhi. He said that "I realise that Mrs. Indira Gandhi is the leader the country needs at this

hour and there is no other party except the Congress under her leadership who could give guidance to the country." The Chief Minister endorsed on this petition on October 19, 1976, that the inhabitants of the area had assured him regarding the good conduct of the applicant. The Government of India was requested on December 29, 1976, to accord approval for the release of Shri Panna Lal. No reply was received till January 14, 1977, when a reminder was sent. The orders were revoked on January 26, 1977, after reviewing the case in the light of the fresh instructions from the Government of India for the release of political detenus.

19.268 It has been reported by the State Government that the policy regarding the grant of parole to the MISA detenus was evolved in January, 1976, while dealing with the case of Shri Lal Chand Sabharwal who had applied for parole on the ground of marriage of his nephew. The State Government decided to consider the release of MISA detenus on parole only in the following cases:—

- (i) Marriage of detenu's son, daughter, real brother or real sister;
- (ii) Death of detenu's father/mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law.

19.269 Scrutiny has revealed that application for grant of parole on the ground of illness of the detenu or serious illness of a family member were also considered sympathetically. Some illustrations are given below:—

- (i) Shri Jagat Narayan of Jullundur, detained on October 27, 1975, was released on parole for three months on March 27, 1976, in view of his poor health. He remained on parole till November 26, 1976. As he refused to give any undertaking for his good behaviour, parole was not extended further and he reported at the jail on November 27, 1976. He was again released on parole on December 5, 1976, and remained on parole until his detention order was revoked on December 31, 1976.
- (ii) Dr. Baldev Prakash, a BJS leader of Amritsar, detained on September 2, 1975, was released on parole for 10 days on January 17, 1976, on the ground of illness of his wife. Parole was extended up to February 3, 1976. He was released again on parole on March 2, 1976, and it was extended from time to time until the order was revoked on January 31, 1977.
- (iii) Shri Panna Lal of BJS detained on February 27, 1976, was released on parole on October 22, 1976, on the ground of illness of his mother. Parole was extended from time to time and he remained on parole until January 4, 1977, when the order was revoked.

19.270 Scrutiny has revealed that in the case of one Shri Bikar Singh son of Shri Bichitar Singh of District Faridkot, the State Government has deviated from their normal policy on parole. Shri Bikar Singh was detained on March 30, 1976, for his alleged association with the Naxalites. He sent an application on June 29, 1976, for grant of parole to enable him to attend the marriage of his sister, fixed for August 9, 1976. This was confirmed by the DM, Faridkot and DSP/CID, Faridkot also. File shows that the processing level in the office of DIG/CID had recommended the case for grant of parole for 15 days in accordance with the policy of the Government to release MISA detenus on parole on the occasion of marriage of the detenu's son/daughter or brother/sister. However, the request of Shri Bikar Singh was rejected on the basis of the following noting recorded by the SP Security CID, on July 30, 1976:—

"Possibility of Shri Bikar Singh's going underground is real and grave. It is, therefore, a fit case to deviate from the policy decision. Detenu's father, grandfather and three brothers are there to attend to this marriage. Government may not, therefore, release Shri Bikar Singh on parole."

RAJASTHAN

19.271 According to information furnished by the Government of Rajasthan, the number of detentions ordered under MISA and other Preventive Laws during the period of emergency was as follows:—

MISA	542
COFEPOSA	14
DISIR	1,352

19.272 The break-up of detentions ordered under the MISA is as below:—

(i) Members or associates of Political Parties	213
(ii) Members or associates of banned organisations	154
(iii) Anti-socials, criminals and others	175

Thus, persons detained on account of political activities outnumbered those detained for involvement in criminal activities. Among the banned organisations, the largest number of detenus consisted of members and associates of the RSS (127). Among members of political parties detained, the majority of detenus belonged to BJS (113).

19.273 According to the information given by the State Government in reply to the Commission's questionnaire on detentions, in 8 cases, the declarations issued by the District Magistrates under Section 16A(3) were not confirmed by the State Government. However, during the scrutiny of cases, it was revealed that in 16 other cases also the declarations issued by District Magistrates were not confirmed by the State

Government. In these 16 cases, the detention orders were pending execution and were revoked before the arrest took place.

19.274 The detentions were ordered by the District Magistrates mostly on the report of the Superintendent of Police. The police sent a dossier in respect of the detenu detailing at length his political activities for the past several years. At the level of the State Government, all cases were put up before the Chief Minister for final orders of confirmation under Section 16A(3). It was seen that no scrutiny of the grounds of detention was carried out by the Home Department. In almost every case the following note was put up by the Deputy Secretary (Home):—

"The District Magistrate has issued declaration in exercise of powers conferred under Section 16A(3) of the Maintenance of Internal Security Act, 1971, as amended by the Maintenance of Internal Security (Amendment) Ordinance, 1975, against detenu for effectively dealing with the emergency. The District Magistrate has also forwarded the grounds of detention and detention order, which are available. From the grounds, it appears that detention is necessary for effectively dealing with the emergency. It is, therefore, proposed that the detention order and declaration, issued by the District Magistrate, may be confirmed under provision of Section 16A(3) of the said Act."

Only the name of the detenu was inserted in this note in each case.

19.275 A few cases were noticed in which the declaration and detention order issued by the District Magistrate was received by the State Government after the expiry of the statutory period of 15 days and in such cases the detention orders were revoked by the State Government. In the case of Shri Gir Raj Kishore Sharma of Jaipur detained on August 18, 1975, the papers reached the State Government on September 5, 1975, i.e. after the expiry of the statutory period of 15 days as revealed from the file of the Home Department. The State Government did not confirm the order of detention and the District Magistrate was informed accordingly on telephone. However, it is seen that the detention order revoked by the District Magistrate bears the date 1-9-75, i.e., within the statutory period of 15 days and 5 days before the State Government ordered revocation of the detention order. In a few cases in which the State Government did not confirm the order of detention, the District Magistrate issued fresh orders of detention and the detenu continued in jail (cases of S/Shri Rikhab Das of District Bundi and Virendra Bandhu of District Jaipur). In the case of Shri Virendra Bandhu, it was seen that he was detained on July 5, 1975, but the declaration under Section 16A(3) was issued by the District Magistrate after 3 days, on July 8, 1975. The detenu filed a writ petition in the High Court on July 30, 1975. In the Home Department, it was noted:—

"He was detained on 5-7-75 while the declaration was issued on 8-7-75.....it should have

been issued simultaneously.... this defect would be fatal and his writ will be accepted."

He was, therefore, released on August 16, 1975, but was re-detained on August 18, 1975.

19.276 No separate grounds of detention were sent by the District Magistrate to the State Government only a dossier received from the police was sent which was apparently treated as the grounds of detention. The dossiers were generally lengthy, containing details of the political activity of the detenu or the past 8 or 10 years. Most of these activities were the normal political activities of members of an Opposition party such as taking part in party meetings or demonstrations organised by the party, etc. In some cases, one or two similar activities of the year 1975 were also mentioned. In the case of Shri Nawal Rai Bachchani of Ajmer, detained on August 14, 1975, the dossier contained reference to various meetings, proceedings, etc., organised by the BJS and RSS from 1971 in which the detenu was alleged to have participated. No activity showing a trend towards violence or disruption was revealed. Last activity mentioned in the dossier was that he had proceeded to Delhi to participate in the rally of Shri Jayaprakash Narayan on March 3, 1975. The case of Shri Prem Sukh of Ajmer is also similar. The activities mentioned in his dossier mostly related to organising RSS Shakhshas in the previous years and last activity mentioned was of December 15, 1974. In a few cases, participation in a secret meeting in the last week of June 1975 was also mentioned in the dossier. The grounds of detention mentioned in the case of Shri Sampat Lal Kachar, District Bikaner, detained on June 26, 1975, only mentioned that on June 17, 1975, he organised a bandh in Bikaner City to protest against shifting of bus stand from the railway station. On the same day, a procession was taken out in which he made a speech against shifting the bus stand.

19.277 In many cases of political leaders, grounds of detention only mentioned in general terms that they belonged to a particular Opposition party and had advocated the policy of Shri Jayaprakash Narayan, spread hatred against the Government and opposed the emergency. But no specific instance was cited to substantiate the general grounds. In the case of Shri Manak Chand Thakur of District Bundi, the grounds of detention mentioned were, that he was the President of District SSP, which was one of the Opposition parties determined to bring about chaos and disorder. The Opposition parties had given a call to unleash the forces of disruption and create lawlessness. Shri Manak was an avowed critic of the Government and had taken part in anti-Government agitations. No specific instance of his activities was mentioned in the grounds.

19.278 37 students were also detained under the MISA and in many cases, the grounds mentioned that they believed in the cult of Shri Jayaprakash Narayan, and propagated that police or military should disobey such orders of the Government which do not suit their convenience. The grounds mentioned in the case of Shri Nathu Singh, a student

leader of Jaipur, were that he was a student leader and had organised students to mobilise the support for overthrowing the Government. He had advocated forcible removal of the Prime Minister by unconstitutional means and that he believed in the cult of Shri Jayaprakash Narayan. No specific instance of any activity was mentioned in the grounds.

19.279 22 Government servants were detained under MISA according to the information given by the State Government in reply to the Commission's questionnaire on detentions. Most of them were detained on account of their alleged association with the banned organisations. There were no detentions of Government servants on grounds of corruption.

19.280 In the cases of criminals and anti-social elements, the police furnished a detailed report mentioning the various offences in which the detenu was involved covering past 5—7 years. In many cases, no recent criminal activity was mentioned. Some persons were detained for indulging in smuggling of foodgrains. 53 persons were detained on account of alleged suspicious association with Pakistanis.

19.281 Two kinds of reviews of MISA detention cases were undertaken by the State Government. One was the four-monthly statutory review under Section 16A(4) and the other was administrative review in accordance with the instructions of Home Secretary, Government of India, issued *vide* his letter No. II. 16011/8175/S&P-D. II, dated October 10, 1975, wherein the State Governments were advised to constitute a Committee for periodical review of detention cases particularly of those detenus who had submitted representations against their detention. It was seen that in the statutory four-monthly review, the cases were directly put up by the Home Department to the Chief Minister for orders and Review Committee did not come into the picture. No report from the detaining authority or the Special Branch of Police appears to have been obtained before undertaking this four-monthly review. In most cases, the Deputy Secretary (Home) used to put up the following stereotyped note :—

"There has been no substantial change in the state of Emergency. The release of the detenu is likely to prejudice the efforts of the Central Government and the State Government in bringing normalcy. There are no reasons to revoke the detention at present. Hence, it is necessary to keep this detenu under further detention in order to effectively dealing with the emergency."

This was approved by the Chief Minister in almost all cases and orders for continuation of detention were issued.

19.282 For the administrative review, a Committee consisting of the Chief Secretary, Commissioner for Home Affairs, IG Police, DIG/CID and Joint Legal Remembrancer was constituted. This Committee mainly dealt with cases of detention in which representations had been received. Three reviews were undertaken by this Committee during

the period of emergency. The first review was held on October 28, 1975 and 66 cases were recommended to the Government of India for revocation of detention orders. Out of these, the Government of India approved the release of 61 detenus. Out of the 5 cases in which release was not agreed to by the Government of India, the case of Shri B. S. Saxena is noteworthy. He was 70 years of age and was not keeping fit. The second review was held on February 23, 1976 in which 40 persons were recommended for release. The Government of India agreed to the release of 30 detenus. The third review took place on July 2, 1976 in which 47 detenus were recommended for release. Government of India agreed to the revocation of detention orders in cases of 23 detenus and granting of parole to 18 detenus. It was also seen that in these reviews the main factors taken into account for recommending the release were :—

- (i) unconditional apology;
- (ii) expressing support to the 20-point programme of the Prime Minister;
- (iii) severance of link with the party or organisation;
- (iv) agitational potential; and
- (v) death or serious illness of a near relation.

19.283 The powers of granting parole were exercised by the State Government. In each case, the orders of the Chief Minister were obtained. It was seen that out of 542 persons detained under the MISA, as many as 258 persons were granted parole. Parole was granted to detenus for attending weddings of brothers-in-law, nephews, nieces, etc., demise of distant relations. 16 detenus were granted parole on the ground that they had expressed faith in the 20-point programme. Out of 37 students detained under MISA, parole was granted to 28 on different occasions. However, in some cases, parole was refused even on such strong grounds as illness or death of mother or a near relative. Shri Piyush Chandra Jain of Udaipur applied for parole on July 21, 1975 and again on August 18, 1975 stating that he was not a member of any political party, but parole was not granted. On September 7, 1976, the detenu's father applied for parole on the ground that the detenu's mother was hospitalised at Udaipur. On September 21, 1975, his mother expired. Parole was again applied for on September 23, 1975, but it was not granted. Ultimately, he was granted parole for 16 days on August 6, 1976, i.e., about a year after his mother's death.

19.284 Shri Onkar Nath Sharma, District Pali, a labour leader, applied for parole on March 11, 1976 stating that his father was hospitalised at Jhansi. The District Magistrate recommended his request for parole but it was refused by the State Government on the ground that his father's condition was not serious. The detenu again wrote that his father was seriously ill and his letter was forwarded by the District Magistrate. His father ultimately died on June 21, 1976. The detenu again

applied for parole on June 23, 1976. The State Government made enquiries from the District Magistrate and the latter informed that as cremation and other rites had been performed, now there was no justification for releasing the detenu on parole.

19.285 Shri Ram Bhajamal of District Jhalawar was a small tea-stall holder, detained on June 26, 1975. His son expired on August 12, 1975, but parole was not granted to him at that time. He was released on October 5, 1975.

19.286 Shri Sundar Dass of Bikaner was not granted parole even on the death of his father. When his father was seriously ill, he applied for parole, but he was granted permission to see his father for half an hour only.

SIKKIM

19.287 It has been reported by the Government of Sikkim that provisions of COFEPOSA and DISIR were not used at all during the period of emergency. Four persons were, however, detained under MISA in October 1976. They were released on parole in February 1977 in pursuance of the instructions issued by the Central Government and their detention orders were subsequently revoked.

TAMIL NADU

19.288 The break-up of detentions ordered under MISA and other Preventive Laws in this State during the period of emergency is as follows :—

MISA	... 1,027
COFEPOSA	... 285
DISIR	... 1,644

19.289 Categorywise break-up of persons detained under the MISA is :—

Political Opposition Parties	... 570
Banned Organisations	... 139
Anti-socials, Criminals and others	... 318

19.290 Amongst the political detenues, the largest number (419) was of members and associates of the DMK while amongst the banned organisations, the CPIML topped the list with 72 detentions followed by RSS (47). Thus detentions of political persons far outnumbered those detained on the ground of being criminals and anti-socials.

19.291 At the time of proclamation of emergency, Tamil Nadu was under the DMK rule and the DMK Government continued in office till the proclamation of President's Rule in the State on January 31, 1976. During this period barring the detention of one AIDMK member, there were no detentions under MISA of persons belonging to political parties. MISA was used only against 45 persons belonging to the banned organisations and 212 anti-socials and criminals. The spate of detentions of political persons

started immediately after the imposition of President's rule in the State and the erstwhile ruling party, i.e., the DMK, had to bear the brunt of MISA onslaught followed by Dravid Kazhagam (35).

19.292 It was seen that District Magistrates used to send a general report in each case attaching a copy of the detention order and declaration issued under Section 16A(3) and grounds of detention to the State Government. In a number of cases, it was found that District Magistrates did not send any other document or material in addition to the above and even the copy of report of SP containing the grounds of detention was not sent to the State Government. The grounds of detention were briefly given by the District Magistrates themselves in which only a reference was made that a report had been received from the SP. (Cases of S/Shri P. Chittranar and T. Ramakrishnan of South Arcot; S/Shri Kulla Naicker and K. R. Ansar of Chinglepet). In the State Home Department, the cases of detention received from the District Magistrates were processed with an office note which only mentioned briefly the grounds given by the District Magistrate and the files were routed through the State Law Department. But it was seen that at the State level, no proper scrutiny of the grounds of detention appears to have been done either by the Home Department or the Law Department. All the files were processed in a routine manner, with the Deputy Secretary (Law) merely putting his initials on the Home Department's note in most of the cases. Thus confirmation of the declaration issued by the District Magistrate under Section 16A(3) was done in a routine and mechanical manner. This is further borne out by the fact that out of 1,027 cases of detention under MISA, the State Government did not confirm the declaration issued by the District Magistrate only in one case. Thus in this State, the action taken under MISA by the District Magistrate was final and confirmation of the detention order by the State Government was, more or less, a formality. However, in two cases of S. Mohd. Ghouse and S. Mohd. Hasan of South Arcot, detained on grounds of bootlegging, the Deputy Secretary (Law) put up a note saying "The materials furnished against these two detenues are vague. No conviction or specified instance is alleged against them." But their detentions were confirmed ignoring this remark of the Law Department.

19.293 In a majority of cases relating to members of political parties, particularly the DMK, the scrutiny of files revealed a set pattern concerning the grounds of detention. The grounds mentioned in these cases were vague and in general terms without indicating any specific activity or fact to denote any prejudicial activity on the part of the person concerned. It was stated that the person was an active worker or associate or sympathiser of a particular party and had rowdy elements at his command. He wielded considerable influence in his locality and after the fall of the DMK Ministry he was active in contacting his party cadre and was likely to indulge in prejudicial acts. But no specific activity either present or past was mentioned in the grounds to substantiate the general allegations. In

several cases, it was also mentioned that he was critical of the emergency and the President's rule. It was interesting to note that in a majority of cases of persons belonging to DMK and DK the detenu was referred to as a rowdy and having rowdy elements at his command, even though no incident or offence was cited against him in support of this assertion.

19.294 A few illustrative examples are set out below :—

Shri Sanjivi Reddy, District Chinglepet, was detained on July 22, 1976. Grounds mentioned in his case were that he was a DMK sympathiser and an active associate of an ex-MLA. He was a rowdy element wielding considerable influence among rowdies. After the fall of DMK Ministry, he was actively contacting his associates and other rowdy elements in order to indulge in prejudicial acts. Shri Arumugam Pillai, Congress(O) worker of district Madurai, was detained on August 8, 1975 on the grounds that he belonged to the Congress(O) and had been preaching cessation of Tamil Nadu and was protesting against the dismissal of the DMK Government. The grounds given in the cases of Shri P. Ramalingam, Secretary, Madurai District DMK, Shri K. Thirupathy and 5 others of District Madurai were identical, namely, that they were active members of the DMK, had been preaching cessation of Tamil Nadu from the Indian Union and after the fall of the DMK Government they were likely to take part in agitations against the Government. In the case of Shri V. Dorai Kanu, District South Arcot, the grounds mentioned that he was Secretary, City DMK and was holding anti-emergency views and was likely to indulge in prejudicial activity. In all these cases cited above, no police report excepting the general report of Superintendent of Police or any other document was produced to substantiate the allegation.

19.295 In many cases, the grounds of detention mentioned that the detenu had been making anti-Government or cessationist speeches but no place, time and date of the alleged speeches was given. (Cases of Shri A. Basha, District South Arcot; S/Shri V. Krishnamurthy Naidu, V. S. Mani and D. Mayavan of South Arcot). In District Tiruchirappalli, in the case of 30 persons, it was seen that the grounds vaguely referred to their making inflammatory speeches against the Government or organising anti-social elements for anti-national acts, but no specific instance to substantiate the above vague allegation was given. (Cases of S/Shri Veera Pathiran, Subramaniam and 13 others, and cases of S/Shri Muthu Krishnan, Socrates and 13 others). In all these cases, no copy of police report or any other supporting document was sent by the District Magistrate to the Government.

19.296 Another general ground mentioned in the cases of many detenus belonging to the DMK was

that they had been interfering in the District administration and had amassed wealth by questionable means. But no evidence of the above activities was produced. In the case of Shri K. Thannan, District Thanjavur, the grounds mentioned were that he was reported to have been interfering in District administration, had amassed wealth by questionable means and had suppressed the political activity of other parties in his District. In the case of Shri N. Kittappa of the same District, detained on February 12, 1976, grounds mentioned that he used to interfere in the administration when he was MLA, had amassed wealth by corrupt practices, had built a new house and got a printing press. He was a rowdy element with lot of rowdies under his control.

19.297 With regard to members and associates of the banned organisations also, the general practice was to mention in the grounds of detention, that the person belonged to or was a sympathiser of the organisation and was having contacts with the underground cadre of the party. No specific activity was mentioned. In most of the cases, the main ground was of having contacts with underground cadre but no document or report was produced to substantiate this vague allegation. (Cases of S/Shri K. Khadiar Meeran, T. V. Shrinivasan Iyer and Chandra Shekharan Iyer, detained on July 17, 1975, by Police Commissioner, Madras). Shri Dorai Swamy of Salem District, was detained on July 21, 1975, on the ground of being an active member of CPIML and having contacts with underground members of its cadre. He was already in jail under DISIR and the District Magistrate reported that his release on bail or acquittal in the DIR case would endanger the defence of India, but no specific activity of the detenu was mentioned.

19.298 Some trade union workers were detained on the ground that they had been criticising the 20-point programme and the Prime Minister and creating rift among workers and inciting workers over the bonus issue. (Cases of Shri S. Narayana Pillai, Secretary, TNTUC State Workers' Union, District Kanyakumari; Shri Kattur Gopal, Secretary, Labour Progressive Federation, Madras City; Shri M. A. Babu, District Coimbatore). In all these cases, no specific activity of the detenu was mentioned excepting the vague and general allegations of inciting workers or criticising the emergency.

19.299 From the above, it would appear that even though there were no specific instructions in writing from the State Government, the District authorities went about using MISA extensively against the members of DMK in particular and others allegedly having associations with this party, simply by furnishing vague and general grounds in a stereotyped manner. This was clearly against the spirit of the provisions of the MISA.

19.300 A case came to notice in which the State Government insisted on continuing the detention of a person even though shortly after issuing the order of detention, the District Magistrate himself recommended revocation, stating that the earlier grounds of detention given by him were not correct. Shri

G. V. Pallanaiswamy Gounder of District Coimbatore was detained on February 1, 1976. The grounds mentioned were that he was district organiser of Congress(O) and President of Ganapathy Gram Panchayat. He was said to have conducted many public meetings criticising the emergency. He was also reported to have convened secret meetings and instigated the youth to indulge in subversive activities. While the case was still under consideration of the State Government, the District Magistrate, Coimbatore, sent a report on February 4, 1976, to the State Government that he had passed the detention orders against Shri Pallanaiswamy based on information furnished by Superintendent of Police, Coimbatore, under instructions from higher authorities but Shri Pallanaiswamy is a firm believer in Gandhism and has not come to any adverse notice. He was well-respected in the locality and had been doing very good work as President of Ganapathy Gram Panchayat. He had never associated himself in any anti-social activities. The District Magistrate further mentioned that from his personal inquiries also he was satisfied that the detenu had an excellent public record and was not in the least associated with any anti-social or anti-national activities. Therefore, his detention should be revoked. But the State Home Department insisted that since the District Magistrate had earlier passed the detention order, it should be confirmed. The noting of the Deputy Secretary (Home), dated February 8, 1976, is interesting. It mentioned :—

"It is strange that DM has made a sudden *volte face*.....in his letter dated 4-2-1976 describing as if a bedraggled goose has become brilliant swan overnight. It is the duty cast on the detaining authority to satisfy himself whether the material placed before him warranted the detention of the person..... This may invite a charge of *mala fide* against the government which the government need not acquiesce in. It is, therefore, felt that there is no need to re-consider the declaration issued u/s 16A(3) of the MISA."

This was agreed to by the Adviser and the detention was confirmed.

19.301 A majority of persons detained under this category consisted of prohibition offenders. Next came persons allegedly involved in rice/paddy smuggling in violation of Tamil Nadu State Control Order. There were very few detentions of other criminals involved in offences under the IPC.

19.302 A scrutiny of cases has revealed that in a large number of cases concerning bootleggers belonging to different Districts, the reports giving the grounds of detention were couched in a set and uniform language. Many of the concerned Districts are Dharampuri, Madras, Nilgiri, Chinglepet, Thanjavur, South and North Arcot, Madurai, Kanyakumari, etc. The grounds of detention were as below :—

"He is a notorious arrack seller having a gang of persons employed under him, every evening persons addicted to drink

who are normally given to violence and illicit arrack supplied to them by Thiru... and his men; after consumption, used, to indulge freely in violent and indecent behaviour. As a consequence, the peace and the tranquillity is seriously affected and people in that area become panicky and terror stricken and are not able to carry out their normal life of society and disturbing the social life and thereby causing a public disorder. It has been reported that prosecution against him and his gang were not successful as nobody came forward to give evidence against them."

19.303 The identical language and contents of the paragraph figure in a number of cases of detentions belonging to different Districts, only the name of the detenu being different. How such uniformity in grounds of detention between different Districts was arrived at remains unexplained. To cite a few examples, this paragraph occurs in the grounds of detention given in cases of Shri Victor Kabali, Smt. Kamala and 26 others of Madras City, Shri Ebnezer, Chairman Dorai and 37 others of District Chinglepet, S. Mohamad Ghouse and S. Mohd. Hassan of District South Arcot.

19.304 In the cases of persons involved in rice and paddy smuggling, the District Magistrate generally obtained an affidavit from the Taluqa Supply Officer regarding the alleged activities of the persons concerned. There were cases in which MISA was used against persons who were alleged to have been involved in rice smuggling only on one or two occasions in the year 1974 or the early months of 1975.

19.305 A few cases came to notice in which MISA was used against persons involved in petty offences like theft or receiving stolen property, etc. Shri Amanullah of Madras City was detained on July 23, 1975, on the ground of being a receiver of stolen property. It was mentioned that in 1973, he was involved in two criminal cases in which iron material was seized from his house but in both these cases he managed to escape the law. Another criminal case of theft in 1974 was also mentioned against him.

19.306 According to the information given by the State Government in reply to the Commission's questionnaire of detentions, the number of Government servants and quasi-Government servants detained under MISA was 56 and it was seen that they were mostly detained on the ground of affiliation with the DMK or the banned organisations.

19.307 No separate Review Committee was set up in the State for periodical review of MISA detentions. The final orders in review were passed by the Adviser to the Governor during the President's rule and by the Chief Minister during the earlier DMK rule. For periodical review, the report of the concerning District Magistrate and DIG/CID was obtained. It was noticed that in almost all cases the State Government agreed with the District Magistrate when he did not recommend the release

of a person. However, there were cases in which the District Magistrate recommended the release of the detenu but it was not accepted sometimes on the ground that the report of DIG/CID was not available or that he had given an adverse report. In the case of Shri Krishnan son of Shri Subhiah, District Ramanathapuram and cases of S/Shri Sevanthilingam and Subramaniam, K. Karikaran, P. Subramaniam and E. Venkettachallam, all of District Tiruchirapalli, the District Magistrate recommended the release of these persons on the ground that though they were members of DMK, they were not likely to be active if released. But this was not agreed to by the State Government on the ground that the report of DIG/CID had not been received.

19.308 During the DMK rule, parole to MISA detenus was granted by the Chief Minister. After imposition of the President's rule, final orders were passed by the Adviser to the Governor. No definite guidelines were laid down in writing for granting parole by the State Government till October 23, 1976. On this date, a Memo. No. 20106/76-1 was issued by the Public Law & Order Department in which guidelines for grant of parole were given. According to this memo., parole was to be granted for marriage and betrothal of detenu's son and daughter, death and serious illness of parents and children, etc. Before the issue of the circular, parole was being granted in many cases on these grounds.

19.309 The procedure followed in the State Public Law & Order Department was that requests for parole were first scrutinised by the Under Secretary and only cases which were considered fit for recommending parole were sent to the Adviser for final orders. Cases which were not considered fit for recommendation were disposed of at the Under Secretary level and requests were rejected by him. Thus in practice, the Under Secretary exercised a wide discretion in the matter of rejecting or recommending the requests for parole. It was seen that in several cases, requests for parole were rejected at the Under Secretary level even though there appeared to be strong reasons for considering them favourably.

19.310 In the case of Shri A. A. Jinah, parole was requested by his brother on the ground that the detenu's mother had a cerebral attack and was admitted in a nursing home. The Police Commissioner, Madras also recommended temporary release of the detenu and sent a telephonic message to the Chief Secretary informing him that the detenu's mother was lying in a serious condition in the female ward of a nursing home. But parole was not granted. Instead the detenu was given permission to visit his mother for two days between 4 p.m. and 6 p.m. on the ground that male visitors were allowed in the female ward only in the evening between 4 p.m. and 6 p.m.

19.311 Shri A. Thaga Pillai of South Arcot requested parole on the ground of his mother's serious illness. A report from the District

Magistrate, South Arcot was called for. The District Magistrate confirmed the fact that detenu's mother had been admitted to a nursing home 10 days back but did not recommend granting of parole to the detenu on the basis that a Revenue Officer had been sent to make a surprise check in the nursing home and he had reported that detenu's mother spoke to him without difficulty though she could not move her hands and legs. Hence, her condition did not warrant the granting of parole to her son. The request was accordingly rejected.

19.312 Shri K. Perumal of District Ramanathapuram was refused parole for arranging the marriage of his daughter on the ground that this could be done by his relatives.

TRIPURA

19.313 According to the information supplied by the State Government in reply to the Commission's questionnaire, the figures of arrests/detentions in Tripura during emergency are :—

MISA	...	77
COFFEPOSA	...	25
DISIR	...	99

19.314 Categorywise break-up of the MISA cases is given below :—

- (i) Members/Associates of Banned Organisations 9—all belonging to Anand Marg
- (ii) Members/Associates of Political Parties 18—6 belonging to Cong (R) and 12 belonging to CPM.
- (iii) Others 50—This includes 3 economic offenders 9 Government employees, 1 journalist, 1 foreigner, 36 anti-social elements.

19.315 12 MLAs of the CPI(M) had earlier been detained under MISA under the orders of the District Magistrate (West) issued on May 20, 1975, before the promulgation of emergency. These detentions were ordered under the normal MISA and the cases were referred to the Advisory Board, which upheld 11 detentions and remarked in the case of Shri Radha Deb Nath only that the detention was not justified. Detention order in respect of Shri Deb Nath was, therefore, revoked on July 31, 1975, and a fresh order invoking Section 16A was passed the same day. All the Government employees detained under MISA were active members of Tripura Employees' Coordination Committee and were, as per their grounds of detention, working against emergency and also enjoying the support of CPI(M).

19.316 Detention under MISA of six Congress leaders of the then ruling Party, including two sitting MLAs, is also noteworthy. Five of these persons, namely, S/Shri Rajeshwar Dutta, Nirmal Bhattacharjee, Hemender Bhattacharjee, Sameer

Ranjan Burman (MLA) and Tapas Dey (MLA) were detained under the orders of District Magistrate (West), dated June 27, 1975. Government of India sent a message on July 31, 1975 enquiring the circumstances of detention of these prominent Congress leaders. The District Magistrate was asked to send the grounds of detention which did not appear to have been received till then. The grounds of detention were found to be referring vaguely to the hobnobbing of these persons with CPI(M) members and attending some secret meetings where they were alleged to have criticised the emergency and called for an agitational approach towards the Government. The Chief Secretary sent the file containing the above information to the Chief Minister, Shri D. N. Barooha, the then Secretary to Chief Minister, Tripura, recorded a note to the effect that the Chief Minister had ordered to include in the grounds of detention of these persons "moral turpitude", "spreading disaffection among the police" and "anti-social activities" also. Shri J. Sengupta, Deputy Secretary (Home), recorded the following note :—

"Secretary to the CM desired me that information relating to the activities of some of the MLAs for creating disaffection towards the Government among the members of police force, etc., should be incorporated. He also desired me to include information about immoral activities of some of the members of Assembly. Accordingly, I have to discuss with the Special Branch (SP/CID) and after discussion with him, I have recorded some of the cases which cover up the desire of the Secretary to the CM. Accordingly, we have incorporated these items into our draft and we have made out a revised draft. This may now be considered for issue, if so desired.

Sd/-

J. Sengupta,
Deputy Secretary.
18-8-1975."

This was approved by the Chief Secretary and the Government of India was informed accordingly. It may be mentioned here that the report of the District Magistrate who had issued the detention orders in respect of these persons made no mention of the moral turpitude, spreading of disaffection among the police force, and anti-social activities attributed to these persons.

19.317 District Magistrate (South) had sent on September 19, 1975, a proposal for the detention of 11 Tripura Employees' Coordination Committee workers. This included the name of one Smt. Manjulika Bose who was a school teacher. A report from the Inspector, District Intelligence Branch, enclosed with the proposal, mentioned that Smt. Bose was a "hard core teacher" who is "very desperate and closely connected with CPM". A reference to a secret meeting of August 10, 1975, was also made.

Another ground for her detention was her active role in the collection of "victimisation funds" for the assistance of families of dismissed/detained Government employees. It was mentioned that one Shri Nand Lal Majumdar was also actively engaged in these activities with Smt. Bose. The case was referred to DIG/CID for a report. SP (Special Branch) wrote on March 11, 1976, recommending the use of powers under Article 311(2)(c) of the Constitution to dispense with the services of Smt. Bose and adding that the activities of Shri Majumdar were being watched. No recommendation regarding action under MISA is found in this report. The Deputy Secretary (Home) sent the file to the Chief Minister recommending detention of Smt. Bose on the ground that SP/CID had also referred to her prejudicial activities, though without recommending action under MISA. The Chief Minister ordered detention of both Smt. Bose and Shri Majumdar on May 25, 1976 and orders were accordingly issued.

19.318 Examination of MISA files has shown that grounds of detention in respect of most of the political detenus lack in material particulars about their alleged prejudicial activities. Detention orders are found to be based on reports of a general nature about the anti-Government activities of such persons who were described as opposed to emergency. "Close door meetings" are found to be quite a common ground of detention figuring almost in every case of political detention. Shri Samir Burman, a Congress MLA, was detained on the grounds of a series of closed door meetings where he had allegedly expressed his anti-emergency views. Shri Sushital Dhar, another Congress leader, was, as per his history sheet, containing the grounds of his detention, detained because he had criticised Smt. Indira Gandhi in some closed door meetings and had contacts with undesirable elements of Bangladesh. No particulars in support of these allegations were given. Shri Harendra Roy, a CPI(M) worker was detained on the following grounds :—

"He is a blind supporter of CPM Party... He is doing nothing and depending on his father. Now he is an active worker/leaders of DYF (CPM) and takes part in each and every movement of CPM."

There was only one thing specific in the grounds of detention that he was expelled from Taltala School in 1969.

19.319 All the 77 detentions ordered during emergency had made use of provisions of Section 16A and no detenu was communicated the grounds of detention. As required by the Act, the detentions ordered by the District Magistrates were to be reviewed by the State Government for the purpose of confirmation of the declaration made by the District Magistrates. The examination of files has revealed that all the declarations made by the District Magistrates were confirmed by the State Government. It is also seen that in the initial stages after the proclamation of emergency, the District Magistrates were not forwarding to the Home Department the grounds of detention of persons detained by them

and were merely sending the copies of the detention orders and declarations to the effect that these detentions were necessary for dealing effectively with the emergency. It is, therefore, not understood how, in the absence of grounds of detention, such cases were reviewed and declarations confirmed by the State Government. That there appears to have been no purposeful scrutiny, legal or administrative, carried out on the detention orders in the Home Department, will become clear from the following illustrations :—

- (i) Shri Bhupender Dutta Bhowmik, a prominent journalist, editor of a daily "Dainik Samvad" and UNI correspondent, was detained under the orders of District Magistrate (West), dated August 1, 1975. The District Magistrate forwarded to the Chief Secretary on August 2, 1975 the copies of the detention order and declaration without sending the grounds of detention of Shri Bhowmik. The order was promptly confirmed, apparently without detailed processing in the Home Department. Ministry of Information & Broadcasting sent to the Government of Tripura on August 21, 1975, a signal asking for the circumstances of detention of Shri Bhowmik. As the Home Department had no material to send a reply to the Government of India, the District Magistrate was asked on August 22, 1975, to send the required particulars. The District Magistrate sent a report on August 30, 1975, giving the grounds of detention of Shri Bhowmik. These referred to two secret closed door meetings of May/June 1975 and vague allegations about his association with the CPI(M). The Government of India was informed accordingly.
- (ii) One Shri Dinesh Chander Saha, an alleged rowdy, was detained on August 2, 1975. The grounds of detention are found to have been signed on December 1, 1975. It is clear that the grounds of detention were forwarded to the Home Department roughly after four months of his detention. The order was, however, confirmed by the State Government within the stipulated period of 15 days.
- (iii) S/Shri Puran Chand and Trishit Dhar were detained under the orders of District Magistrate (North), dated August 25, 1975, for their alleged criminal activities. File shows that they were involved in some property offences. It is, however, noticed that the Superintendent of Police (North) had sent the proposal for their detention on August 30, 1975 enclosing with it the history sheets of these criminals. It is not understood how the detentions were ordered on August 25, 1975, i.e., 5 days before the origin of this proposal from the SP. Grounds of detention were taken entirely from the letter of the SP. Thus, as per the file, there was no material before the detaining authority on August 25, 1975

when the detention order was passed. Declarations in these cases were also confirmed by the State Government without raising any objection.

19.320 Vagueness or insufficiency of grounds as vitiating the orders was not appreciated by the State Government which had confirmed all the detention orders issued by the District Magistrates. Following examples of non-political category of detentions are given in this connection :—

- (i) Shri Amulya Bhushan Chakravarty was detained under the orders of District Magistrate (North), dated September 1, 1975. It is mentioned in the grounds of detention that he was evicting the tribals from their land. No specific details in this connection were given.
- (ii) S/Shri Hira Lal Saha, Hari Bhushan Saha and Mukant Lal were detained under MISA and are shown in the category of economic offenders. Shri Hira Lal Saha was detained under the order, dated July 3, 1975 issued on the basis of a police report containing vague allegations that he was manipulating market prices, hoarding essential commodities, making huge profits and having connections with smugglers on the Indo-Bangladesh border. No particulars of any specific case against him were mentioned.
- (iii) Shri Mukand Lal of Belonia was detained under the orders of District Magistrate (South), dated July 30, 1975, on the following grounds :—

"He is known smuggler of Belonia. He has amassed much fortune out of nothing through smuggling to Bangladesh. He is a veteran smuggler, blackmarketeer, profiteer and by these nefarious activities, he has at present become millionaire and has also created a so-called status based on easy gotten money. He has got a gang of smugglers under him and he is called uncrowned king of smugglers in Belonia Sub-Division. His smuggling activities through his gang of agents have not abated even following declaration of emergency and this has greatly facilitated by his owning a fleet of light and heavy vehicles which he bought from the smuggling money earned by him."

19.321 It is also observed that alleged economic offenders in regard to whom grounds of detention refer to their prejudicial activities affecting the supplies of essential commodities, were detained under Section 3(1)(a)(ii) which deals with security of the State and maintenance of public order and not under Section 3(1)(a)(iii) which deals with maintenance of supplies and services essential to the community. In spite of this infirmity in the order, the Home Department had sought the orders from

the Chief Minister for confirmation of declarations issued by the DM in respect of these persons. It appears that the order issued by the DMs were not subjected to any worthwhile scrutiny and were confirmed as a matter of policy.

19.322 Four-monthly reviews were carried out in the Home Department. Cyclostyled notings were prepared for obtaining the Chief Minister's orders in this connection. The recommendations of District Magistrates were invariably called for before putting up the cases to the Chief Minister. Continued detention was ordered in each case on the basis of the note recorded by the Deputy Secretary (Home) to the effect that the file was put up to the Chief Minister and he had ordered the continued detention of the detenu concerned. The Chief Minister himself does not appear to have put his signature on any such proposal in the files. No one was released as a result of the four-monthly review of his detention. The Government of India had issued instructions on October 10, 1975, for the constitution of a State level committee to consider the matters connected with the four-monthly reviews and representations received from and on behalf of the detenus for their release. File shows that Shri J. Sen Gupta, the then Deputy Secretary (Home), had put up these instructions to the then Chief Secretary Shri B. S. Raghavan on November 26, 1975 suggesting the constitution of a committee with Chief Secretary as Chairman and Judicial Secretary and DIG Police as members. This was not approved by the Chief Secretary, who wrote to Shri S. L. Khurana, Union Home Secretary, on November 29, 1975, saying that the elaborate procedure suggested in the letter from the Home Ministry was not necessary for a small State like Tripura which had little population, where the CM was personally reviewing each and every detention and the Chief Secretary was having constant consultations with the IGP and other senior police officials. The four-monthly review was, thus, left entirely to the Home Department. Scrutiny of files has also shown that the cyclostyled notings of the Deputy Secretary (Home), leaving space for entering the name of the detenu and the due date of review were sent straight to the CM without any remarks or specific recommendations from the Chief Secretary.

19.323 No detenu was released as a result of considerations of his case at the time of the periodical review. No release was ordered in the year 1975. Only one detenu Shri Amrendra Sharma was released in September 1976. A majority of the political detenus belonging to the CPM and its allies were released in January 1977 and the rest in February/March 1977. Orders in respect of the Congress (R) detenus, except Shri Samir Ranjan Burman, MLA, were revoked on February 18, 1977. It is, however, seen that all of them had already been released on parole and had continued on parole until their orders were revoked. Two of them namely Shri Rameshwar Dutta and Shri Nirmal Bhattacharjee had remained on parole since October 1975. So the actual detention suffered by the Congress detenus, except Shri Samir Ranjan Burman, was much less than the detention of other political detenus. The

case of Shri Samir Ranjan Burman deserves to be set out in detail. The Government of India had issued instructions on February 16, 1977, directing the State Governments and Union Territories to release most of the political detenus. The Government of India had emphasised that orders in respect of persons covered under these instructions were to be revoked within 48 hours. Orders in respect of 14 political detenus, including five Congress detenus, were, therefore, revoked on February 18, 1977. The file shows that the Chief Secretary had discussed the case of Shri Samir Ranjan Burman with the Chief Minister on February 18, 1977. The CM had specifically ordered that detention of Shri Samir Ranjan Burman, MLA, who was expelled from the Congress, was to continue. The noting of the Chief Secretary shows that the CM had desired that Shri Samir Ranjan Burman was to be treated as an economic offender and his detention was to continue. Shri Burman threatened on March 9, 1977 to go on hunger strike from March 10, 1977 to focus public attention over the continued detention of several political detenus including him. 35 advocates of Tripura had also sent a petition to the Government on March 8, 1977, urging for his release. It is seen from the file that the Chief Secretary sent a message to the Chief Minister, who was at Kamalpur at that time, requesting for decision regarding release of Shri Burman as two more communications from Government of India had also been received by that time. The order in respect of Shri Burman was revoked on March 10, 1977.

19.324 Examination of files, has revealed that no definite policy on parole was followed. In fact there were very few cases of grant of parole—only 5 in 1975 and 13 in 1976. The cases of 1976 fall in the last quarter of the year. A large number of detenus were released on parole in January/February 1977. This was done after the receipt of instructions of Government of India to start effecting releases. As a matter of fact, these persons were to be considered for revocation of their orders and not merely for their temporary release. Examination of parole cases also reveals that once a detenu was released on parole, his parole was never suspended and extensions were granted from time to time until the detention order was itself revoked. This will be clear from the following illustrations :—

- (i) S/Shri Rameshwar Dutta and Nirmal Bhattacharjee, Congress detenu detained in June 1975, were granted parole in October 1975 and they remained throughout on parole until their orders were revoked on February 18, 1977.
- (ii) Shri Hemender Bhattacharjee, a congress detenu detained on June 29, 1975, sent a petition on June 12, 1976, regretting his past political activities and declaring full support to the 20-Point Programme. The Special Branch recommended the temporary release only and he was released on parole on September 19, 1976. He remained on parole until the order was revoked on February 18, 1977.

(iii) Shri Sushital Dhar of Congress, detained on November 17, 1975, was granted parole on November 19, 1976 for one month. It was extended from time to time and he remained on parole until the order was revoked on February 18, 1977.

(iv) Another Congress detenu Shri Tapas Dey, MLA, was also released on parole on December 21, 1976, and remained on parole until February 8, 1977, when the detention order itself was revoked.

19.325 Members of banned organisations were also allowed to remain on parole and over considerably long periods. Shri Surat Ranjan Khisa, detained on July 19, 1975, for his alleged Anand Marg activities sent a petition on August 18, 1975 regretting his past activities and promising to keep himself away from Anand Marg. On the basis of the recommendations of the Special Branch, he was released on parole on November 12, 1975. The period of parole was extended from time to time and he remained throughout on parole. However, as intimated by the State Government, another Anand Marg detenu Shri Gopi Vallabh Saha was refused parole in August 1976 on the ground of illness of his father as his case was referred to the Central Government and no reply had been received from them.

19.326 Parole cases of the alleged economic offenders also appear to have been dealt with liberally. Shri Hira Lal Saha, an alleged hoarder and black-marketeer, detained on July 3, 1975, was granted parole on November 18, 1975, on the ground of illness of his mother and he remained on parole throughout until the order was revoked on March 21, 1977. Shri Hari Bhushan Saha, another alleged economic offender, was released on parole on November 1, 1976, and continued to remain on parole until his order was revoked.

19.327 Out of 9 Government employees detained under MISA, on account of their TECC activities (Tripura Employees' Coordination Committee), services of 7 were dispensed with under the provisions of Article 311(2)(c). One of these persons, Shri Rakhal Chaudhury sent a petition on August 20, 1975, for release. The Deputy Secretary (Home) recorded on the file that the continued detention in such a case where action under Art. 311(2)(c) has been taken, can amount to a double punishment. The request for release was not accepted. However, he was released on parole in December 1975 and remained on parole until detention order was revoked on March 4, 1977.

UTTAR PRADESH

19.328 Uttar Pradesh topped the list in the country in the number of persons detained under MISA. According to information furnished by the State Government in reply to the Commission's questionnaire on detentions, the total number of persons detained under the MISA, DISIR and

COFEPOSA during the period of emergency is as follows :

MISA	.. 6,936
COFEPOSA	... 126
DISIR	.. 24,781

The figures of detentions under DISIR include those detained later under MISA, because a number of persons were first arrested under the DISIR and were later on the same grounds, detained under the MISA.

19.329 The break-up of detention figures under the MISA according to the information obtained from the Ministry of Home Affairs, Government of India, is as follows :—

Political parties	... 785
Banned Organisations	... 637
Economic Offenders	... 180
Anti-socials, Criminals and others	... 5,354

It is seen that the number of detentions on grounds of political activity was proportionately small in this State and more than 80 per cent of detentions under MISA comprised alleged criminals, anti-socials and others. Amongst the persons detained for alleged political activity, the majority consisted of members or associates of the Jan Sangh (178), BLD (148) and CPI (145). Among the banned organisations, the largest number of persons detained belonged to RSS (475).

19.330 A notable feature of detentions under MISA in this State was that a number of persons were first arrested and prosecuted under DIR. Later, they were detained under MISA on the same grounds when it was apprehended that they were likely to be released on bail or otherwise in the DIR cases or were already released. Syed Sultan Ahmed (JIE worker) was arrested under the DIR for allegedly inciting Muslims to oppose Government on July 8, 1975. As he applied for parole in the High Court, the detention orders under MISA were passed on the ground lest he be released on bail by the High Court. Shri Harkesh, son of Guru Sahay, was in jail facing prosecution under DIR on the ground of being an active worker of Sarvodaya. His case was to come up for hearing in the court on September 20, 1975. Order of detention under MISA was issued against him on October 28, 1975.

19.331 At the State level, all cases sent by the District Magistrates for confirmation of declarations issued under section 16A(3) were routed through the Law Department before being submitted to the Chief Minister for final orders. It was seen that in quite a large number of cases, the State Law Department clearly pointed out the inadequacy, irrelevance or impropriety of the grounds of detention furnished by the detaining authority and opined against confirmation of the detention. But almost invariably the advice of the Law Department was ignored and detentions were confirmed by the State Government on 'administrative grounds' which were nowhere

defined. Shri Ram S/o Shri Raghunath of District Lucknow, was arrested and prosecuted under the DIR for making anti-Government utterances in public on June 30, 1975. He was sentenced to five months' RI and as his sentence was about to expire, order for his detention under MISA was issued on January 22, 1976. The State Law Department pointed out that the report of District Magistrate showed that the anti-Government utterances were made by another man and the detenu was only alleged to have expressed agreement with him; as such the grounds were not at all sufficient for his detention under the MISA. But the detention was confirmed by the State Government. Shri Radhey Shyam Bharti, Advocate of District Shahjehanpur was detained firstly on June 27, 1975 on the basis of a single incident of making a statement criticising the emergency. The State Law Department opined that detention on the basis of a single incident was not justified and proper. The State Government agreed with the view and revoked the order of detention. But Shri Bharti was redetained on November 21, 1975 by the District Magistrate on the ground that on November 3, 1975, he took part in a secret meeting of Opposition leaders in which it was decided to start an agitation against the emergency. This order of detention was confirmed by the State Government despite the objection by the State Law Department that material on record was not sufficient to justify the detention. In the case of Shri Shiv Nayak Singh of District Sultanpur, detained on August 30, 1976, for being an active BJS worker, the grounds of detention referred mostly to his normal political activities before June 1975 and one incident of May 14, 1974 was mentioned when a procession against levy policy was taken out. The Law Department opined that the grounds did not refer to any prejudicial activity after declaration of emergency and did not recommend confirmation of the order, but it was confirmed by the State Government.

19.332 With regard to detentions of persons on the grounds only of being members of a banned organisation like RSS, the State Law Department made the following observations in the case of Shri Mahesh Chander Tiwari of District Agra :

"I am unable to notice anything upon which the said subjective satisfaction of the DM could be found, apart from the allegation, of course, that Shri Tiwari had been an active member of the RSS. That organisation is banned and in the event of some overt act, there may be a case under Rule 33 of the DISIR but the jurisdiction to be exercised under the MISA is not to be confused with mere membership of the organisation . . . order made in this case upon such material may be considered mechanical and without any appreciation of the requisite satisfaction to be arrived at."

The above advice notwithstanding, the detention was confirmed by the State Government.

19.333 According to the information given by the State Government in reply to the Commission's questionnaire on detentions, in no case the grounds of detention were considered inadequate by the State Review Board. However, during the scrutiny of cases of detention, a few cases came to notice in which the State Government did not confirm the order of detention passed by the District Magistrate. (Cases of Shri Mazrul Haque of Lucknow, Shri Vikram Singh of Meerut, Shri Bhagwan Das Gupta of District Banda).

19.334 It was also seen that serious irregularities and legal flaws in the orders of the District Magistrates operated as no bar in continuing a person's detention under the MISA in many cases. In Lucknow District, there were some cases in which the detention orders passed by the District Magistrate were revoked by him *suo motu* without assigning any reason and fresh orders of detention were issued on the same grounds. In the case of Shri Hafiz, son of Shri Rehman, the first detention order was issued on January 22, 1976, on the basis of a single incident. It was revoked on February 5, 1976 and fresh detention order was issued, which was again revoked on February 19, 1976, and a third detention order was issued on the same ground. The case of Shri Bharat Singh Yadav is also similar. Though the Law Department also objected to this practice, no follow up action appears to have been taken by the Government to stop this practice.

19.335 The cases of 2 MLAs of District Bullandshahr, Shri Aidal Singh and Shri Teja Singh, detained under MISA on September 28, 1976, and September 17, 1976, are worth mentioning. The grounds given by the District Magistrate in both these cases consisted of his own brief report on these individuals unsupported by any document or evidence whatsoever. The grounds given in the District Magistrate's note regarding Shri Aidal Singh were "from secret inquiries, it has been found that the activities of Shri Aidal Singh, MLA of Jawar constituency of District Bullandshahr are highly prejudicial for the maintenance of public order". The grounds given in the case of Shri Teja Singh read: "From the confidential inquiry, it has come to light that the activity of Shri Teja Singh, MLA were prejudicial to the maintenance of public order and he has close links with notorious dacoit Sunder Singh of village Dujena, PS Dadri of District Bullandshahr for whose arrest heavy rewards have been declared. Detention of Shri Teja Singh, is, therefore, necessary in public interest". The State Law Department noted in both the cases that they contained no material on the basis of which any opinion could be given. In spite of it, the detentions were confirmed by the State Government.

19.336 As regards members of the CPI detained under the MISA, it was noticed that large number of persons were detained in the last week of December 1976 and the grounds given in most of these cases related to their opposition to and criticism of the 5-point programme of Shri Sanjay Gandhi. In

many of these cases, it was mentioned that the CPI was planning to launch an agitation against the rising prices.

19.337 20 Journalists, 153 lawyers, 180 school/university teachers, 36 doctors, 31 trade union leaders/workers, 109 public servants and 158 students were detained under MISA during emergency in this State. The scrutiny of their cases of detention has revealed that barring public servants, most of the persons in the other categories were detained on the grounds of alleged political activities. As regards public servants, majority of them was detained on grounds of being involved in corruption cases and a few on grounds of opposition to family planning programme. Detention of Government servants on grounds of corruption was a distinguishing feature of the use of MISA in this State. Most of the Government servants detained under the MISA on grounds of corruption were already being proceeded against under the provisions of Prevention of Corruption Act and other laws and in many cases criminal proceedings were already pending against them in Courts of law. Many of these were already under suspension and, as such, they could not have been in a position to indulge in any prejudicial activity in respect of their Government service.

19.338 In many cases the State Law Department pointed out that detentions on such grounds were not justified but their advice was ignored and detentions were confirmed. To cite an example: Shri N. K. Srivastav, Assistant Engineer, Levy Irrigation Division, Cassipore was detained on November 26, 1976 on the ground that he was responsible for the purchase of excess quantity of stones in 1973, which were lying unused till May 1975 thereby causing the State Government a loss of over 3 lakhs of rupees. The Law Department pointed out the insufficiency of the grounds for the use of MISA and also mentioned that it was more a case of an officer acting in an irresponsible manner who can be dealt with departmentally. Still the detention was confirmed by the State Government and he continued to be under detention till March 19, 1977. One ASI Rajinder Singh of Meerut was detained on September 2, 1976, on the basis of an alleged incident of accepting illegal gratification on December 15, 1972. It was seen from the file that he was acquitted of the charges of corruption on October 28, 1976, but continued in detention under MISA till March 1, 1977.

19.339 Scrutiny of cases has revealed that MISA was used to coerce persons to either get themselves sterilised or for bringing cases for sterilisation. Particularly, school teachers were under great pressure to bring cases for sterilisation and some of them had to suffer detention under MISA for their failure to satisfy the Education Department authorities in this respect. Cases of 3 teachers, S/Shri Chandra Shekhar, Umesh Chandra Dixit and Swami Prasad, detained under MISA on September 20, 1976 amply illustrate this point. The scrutiny of their cases has revealed that District Inspector of Schools wrote a letter to the District Magistrate on September 19, 1976, giving the names of 7 teachers who were not

complying with the orders regarding sterilisation. Vague allegations about their making propaganda against the family planning were also made in the report. Shri Ram Daur Sharma, an LDC in the Education Department, District Sultanpur, was detained on October 14, 1976, mainly on a report by the District Basic Education Officer which referred to his refusal to get himself sterilised. The detention was confirmed and the detenu remained in jail till March 3, 1977. In the case of Sharif-ul-Hassan, detained on the ground of opposition to family planning, it was seen that the District Magistrate recommended revocation of his detention *vide* his letter dated December 10, 1976, on the ground that now the detenu had given his consent for sterilisation. This reveals how MISA was used as an instrument of coercion for forcibly sterilising people, a consideration not germane to the purpose of the Act.

19.340 158 students affiliated to different political ideologies but mainly connected with the Lok Sangharsh Samiti, were detained under MISA. In February 1976, the Home Department sent a circular to all district authorities mentioning "all students and teachers already arrested in connection with prejudicial and anti-national activities should be proceeded against immediately without waiting for the outcome of the cases in the court of law."

19.341 MISA was used on an extensive scale against all kinds of activities ranging from involvement in petty offences like possessing unlicensed arms, ordinary thefts, quarrels, etc., selling milk on higher prices, committing defalcation in Government offices and Cooperative Societies, use of inferior material in construction works by contractors and so on, most of which were totally irrelevant for the purposes of the Act. Even persons involved in land disputes did not escape the clutches of MISA. Persons accused of an offence like murder and already being prosecuted in a court for the offence were also detained under MISA (Case of Shri Rajkumar Yadav, District Lucknow).

19.342 Large scale detentions of petty criminals apparently were due to circular No. 75129/VII-3-8168/75 dated July 14, 1976 issued by the Commissioner and Secretary, Home Department (U.P.), which laid down a fixed target for reduction of crime in each district. The circular mentioned that "a minimum reduction of 50 per cent in all serious crimes should be aimed at during the current year". The circular further directed that a list of all undesirable elements and criminals in the district should be drawn up at the district level within 15 days of the receipt of this letter and deterrent action including the use of MISA should be taken against undesirable persons and criminals. It appears that the district authorities went about the job of reducing crime by 50 per cent in their district simply by detaining a large number of persons against whom even a minor criminal offence was alleged earlier. Even those persons against whom no criminal activity could be shown for the past 8 or 10 years, were detained. In the case of Shri Jai Kumar, District Muradabad, the offences alleged in the grounds of

detention related to a period prior to the year 1969. The case of Shri Anand Swarup of District Hamirpur was also similar.

19.343 In a few cases MISA was employed on totally irrelevant grounds. Shri Sajjad Khan, son of Shri Sukhad Khan, Pradhan of Gram Sabha, Nagla Daud, District Farrukhabad, was detained on December 23, 1976 on a report by the SDM that since long the detenu and his father had occupied a land reserved for construction of Block Office and they had now filed a suit in a court for preventing the construction of the Block building. The grounds given in the case of Shri H. R. Khan, Chief Editor of weekly newspaper "Operation Kanauj", District Farrukhabad, detained on December 9, 1976, were that his activities had been anti-government. He inwardly opposed the policies of the Congress, while professing outward support, indulged in yellow journalism and blackmail, talked against the Government in tea shops and hotels, outwardly talked of 20-point programme but had no faith in it and was not making any efforts to highlight the programme before the public.

19.344 Shri Mohan Lal, a contractor of District Pratapgarh, was detained on the ground that he did not supply bricks of the specified category in respect of a contract undertaken by him.

19.345 There were cases in which grounds of detention given by the detaining authority were subsequently found to be false or concocted on CID inquiry. Shri Shiv Dutt Addi and 9 others of District Bulandshahr were detained on July 12, 1976, on the ground that they were harassing cultivators in the purchase of wheat. They used to purchase wheat at a cheaper rate from the cultivators and sold it back at the FCI wheat purchasing centre after mixing other varieties. The Law Department opined that in all these cases the report of the District Magistrate did not disclose what law or rule these persons had violated nor was it clear whether any offence under the Essential Commodities Act was committed. But the detention was confirmed on administrative grounds. Later, on representation by these detenus, an inquiry was conducted into the matter by CID which revealed that these persons who were traders had nothing to do with the illicit sale and purchase of wheat and there was no evidence to substantiate the allegations made against them. Thereupon, the State Government revoked their detention order on January 23, 1977.

19.346 According to the information given by the State Government in reply to the Commission's questionnaire on detentions, a Review Board was constituted by the State Government, consisting of the Home Secretary, Secretary to the Chief Minister, Legal Remembrancer or his representative, Inspector General of Police or his representative and a representative of State Intelligence Department. The Board held its sitting twice a month for reviewing cases of detention. However, in several cases, the revocation of detention order was done by the State Government without consulting the Review Board. Cases have come to notice in which decision for

revocation was taken at the instance of local Congressmen. Shri Shiv Sagar, son of Shri Daya Prasad, and Shri Prithvi, son of Shri Gajju Mal, both of District Etawah, were detained on September 22, 1975 on the ground that they were involved in 'satta' activities in a big way and had also publicly incited people against the Government to commit acts of violence on July 7, 1975. The detention orders were confirmed by the State Government on October 1, 1975. Subsequently, there were representations on behalf of these detenus stating that they were active members of the Congress and had been wrongly detained. A large number of certificates from Congressmen about their good conduct and support to the Congress Party were also filed with these representations. The State Government obtained the comments of the District Magistrate on these representations and he clearly gave the opinion that these persons had an unsavoury police record and were notorious for 'satta' activities. But the Governor (this happened during the time when U.P. was under President's rule) in his order dated January 3, 1976, mentioned: "In view.....of the large number of certificates given by several responsible Congressmen including Pradesh Congress President, I am clear that they are not politically involved to merit detention under the MISA. At best, they must have been indulging in 'satta' and it has been stated that cases under Gambling Act are already pending against them. That will be the natural way to deal with such cases. Under DIR also they have been given bail. I think in both the cases revocation of MISA may be recommended to the Government of India". A recommendation was sent to the Government of India accordingly and after obtaining approval, the detention orders were revoked on February 17, 1976.

19.347 These two cases illustrate the point that while a large number of persons were kept in detention for long periods for activities less prejudicial than of these two persons, the State Government took a very lenient and liberal view in these two cases mainly because their cases were recommended by Congressmen. The case of Shri Teja Singh son of Shri Ram Avtar Singh of Etawah District, is identical. He too was shown special consideration by the State Government because of recommendations by Congressmen even though he was said to be a notorious 'satta' operator.

19.348 The State Government in their reply to the questionnaire on detentions has mentioned that: "no definite policy for granting of parole was laid down in black and white. In actual practice, parole was granted by the Chief Minister in his discretion. Sometimes extensions in period of parole up to 7 days was granted by the Home Secretary". Scrutiny of cases has revealed that in several cases the Chief Minister rejected the request for grant of parole without specifying any reasons even though it was recommended by the District Magistrate and endorsed by the Home Department. In several cases, request for parole was refused even though apparently there were strong reasons for granting it. In the case of Shri Krishna Kumar Upadhyaya, a RSS worker of District Bulandshahr, parole was requested on ground of the serious illness of his wife and the

fact that there was none to look after her. The fact of illness was confirmed by the SP and the District Magistrate recommended release on parole for two months, but the request was rejected by the Chief Minister. The cases of Shri Ram Swarup son of Shri Thakur Das of District Muradabad and Shri Pratap Narain Singh son of Shri Bindra Singh, District Azamgarh, are identical. Shri Anil Kumar of District Bulandshahr was refused parole despite the fact of the serious illness of his mother having been confirmed by the SP. Shri Kaushal Kishore Gautam, a clerk in the State Bank, Lucknow, who was detained on grounds of indiscipline and misconduct, was also refused parole which was asked for because of his mother's serious illness, by a one word order "Aswikrat" (Not approved). It was seen that in none of these cases any reason was given in the order of refusal. The requests for parole made by MISA detenus, in many cases, were dealt with in a very arbitrary manner.

WEST BENGAL

19.349 The number of persons detained in the State during the period of emergency under the MISA, DISIR and COFEPOSA is as follows :—

MISA (by invoking Section 16A)	—	311
MISA (Unamended provisions)	—	4681
DISIR	—	2547
COFEPOSA	—	80

19.350 The total number of detentions ordered by invoking Section 16A of the MISA in this State was 356. Out of these 311 persons were detained and the rest remained absconding. The break up of persons detained by invoking Section 16A is as follows :—

Political Parties	—	41
Banned Organisations	—	186
Anti-socials, Criminals and others	—	84

Thus the number of detentions under Section 16A of the MISA on political grounds was proportionately quite small and the majority of detenus comprised members and associates of banned organisations. Amongst these, those belonging to the Anand Marg topped the list (82) followed by CPIML (65), and RSS (31).

19.351 Apart from this, 4681 orders of detention were issued in the State under the provisions of the unamended MISA, without taking recourse to the amended provisions under Section 16A of the Act. With regard to the detentions covered by Section 16A, the Home Secretary had issued instructions to the district authorities *vide* his d.o. letter No. 11669(15)-HS(Secret) dated July 3, 1975 in which it was said :—

"This is an extraordinary power and should be used very sparingly. Chief Minister desires that before any person is detained without giving grounds, an informal approval of the

Home Department should be taken. For obvious reasons, no written reference should be made, but you may communicate to the Home Secretary or the J.S. Home (Special) Department over the phone."

In the Home Department file No. SPL-102/75, the then Chief Minister passed the following orders with regard to the cases of detention ordered by invoking Section 16A of the MISA :

"No detention order should be issued without my consent. This will apply to the detention under amendments where no grounds need be given at all."

19.352 A few cases came to notice in which the detenu was earlier detained under the unamended provisions of the MISA but was subsequently released because the Advisory Board did not agree to the confirmation of the detention order and immediately afterwards he was detained by using the powers under Section 16A of the Act. Swarajya Bandhu Bhattacharjee, Secretary, Socialist Party was first detained on June 28, 1975 on the ground that he attended a secret meeting of West Bengal Jan Sangharash Samiti. His detention order was passed under Section 3(1)(a) of the MISA. But on the case being referred to the Advisory Board as required under the unamended provisions of the Act, the Board declared the grounds of detention to be insufficient and consequently he was released on September 8, 1975. After 7 days, on September 15, 1975, he was redetained by invoking the provisions of Section 16A of the Act on a similar ground of participating in a secret meeting on September 26, 1975 and the detention was confirmed by the State Government.

19.353 District Magistrates sent copies of detention order and declaration made under Section 16A(3) along with the history sheet, narrating the activities of the detenu, to the State Government. No separate grounds of detention were sent to the State Government and this history sheet was apparently treated as the grounds. It was seen that in most cases the history sheet contained an account of the detenus' life from the beginning and most of the facts and activities mentioned therein had little relevance to the purpose of issuing the order of detention. In the end, a few activities alleged to be prejudicial were mentioned. In the State Home Department, the cases were put up to the Minister of State for Home for final orders of confirmation. It was seen from the files that little scrutiny of the grounds of detention was done at the State Government level. In almost all cases the Home Department put up a note for confirmation of the detention order. Out of the total number of detentions ordered under the MISA, only in one case the State Government refused to confirm the declaration issued by the District Magistrate (Case of Nimai Chandra Jena, District Midnapore). The Law Department was not involved in the scrutiny of detention cases.

19.354 The largest number of persons detained under this category belonged to the CPIM (8). In the cases of persons belonging to the political parties,

the history sheet furnishing the grounds of detention, sent by the police mentioned some past political activity of the detenu such as taking part in meetings and activities of the party concerned and in most cases one secret meeting held during the period of emergency was mentioned in which the detenu was alleged to have participated. A similar procedure was followed in the case of banned organisations also. In very few cases, more than one secret meeting was mentioned in which the detenu was alleged to have participated. Biman Mitra, Calcutta, was detained on September 14, 1975 and his history sheet mentioned that he was the leader of Jan Sangharash Samiti and had attended a secret meeting on June 26, 1975. No other activity was mentioned. He was detained about 3 months after the date of this alleged secret meeting. Dhrub Deo Narainsingh and Alope Mukherjee, both of District 24-Parganas, were detained on the grounds of being Anand Margis and attending a single secret meeting of Anand Marg on June 26, 1975 in which it was allegedly decided to oppose the emergency. Nimai Chandra Saha, District Hooghly was detained on November 27, 1976 on the ground that he took part in various activities of the CPIML in 1973-74. History sheet did not reveal any activity after August 1974.

19.355 24 Government servants were detained under the MISA. Most of them were detained on the ground of being active members of either the Central Government or State Government Employees' Association and trying to adopt go slow tactics or dislocate work in offices and factories. Panchu Gopal Bannerjee, Paritosh Kumar Biswas and 6 other employees of the Central Government working in various offices like Posts & Telegraphs, Income Tax etc. were detained on identical grounds of being members or office bearers of Central Government Employees' Association and members of the Coordination Committee of the Association. It was mentioned in the history sheet that the Coordination Committee held a meeting on July 5, 1975 in which it was decided to undermine normal working in all Central Government Offices and in pursuance of this decision, these persons secretly incited the employees in their respective offices to resort to work to rule tactics on July 7, 1975. Sham Lal Mukherjee, Food & Civil Supplies Inspector in District Purulia was detained on July 21, 1975 and his history sheet only mentioned that he was an active member of employees association and had been indulging in whispering campaign to spread dissatisfaction among the employees.

19.356 24 Trade Union workers were detained under the MISA. In most of their cases, it was alleged that they attended a meeting in which it was decided to adopt go slow tactics. In some cases, it was alleged that they had created disturbance in the concerned factory. (Cases of Beni Madhav and Mukul Chand Biswas of Metal Works Company, Calcutta).

19.357 The number of anti-socials and criminals detained under Section 16A of the MISA was proportionately small. Most of them were detained on the grounds of being involved in offences like assault, stabbing, robbery etc. The history sheet sent by the police mentioned only the number and sections of the

law of offences in which they were alleged to have been involved in the past. There were a few detentions on the grounds of indulging in paddy smuggling or not paying rice levy. Tarakdas Mukherjee and Durga Das Sarkar, both of District Burdwan, were detained on March 13, 1976 on the grounds that they were big paddy cultivators and businessmen. They did not pay the full levy on rice imposed on them and had filed a case in the High Court against the levy collection.

19.358 In March 1977, the State Government directly issued detention orders in respect of 27 persons who were said to be anti-socials. There is one combined file (No. SPL-24/77) containing a note dated March 14, 1977 of the then Home Secretary which read :

"As desired, the history sheets of the following persons are placed below :"

A list of 27 persons was given in the note. On this note of the Home Secretary the following order were passed by the then State Minister for Home and approved by the Chief Minister :

"Seen History sheets. Issued orders of detention under Section 16A of the MISA. Classification A."

19.359 It was seen that the State Minister for Home added one name, Devi Ghoshal of Belgharia, at the end of this list and one name of Ananda Ghosh was struck off. The orders of detention were actually executed in respect of only 15 out of the 27 persons and the remaining 12 were not apprehended. All the 27 orders of detention were revoked by the State Government on March 21, 1977. The history sheets of many of these persons were very brief and hardly disclosed any prejudicial activity. In the case of some detenus the main ground mentioned in the history sheet was that they disturbed the election meetings of the Congress Party or attacked Congress workers.

19.360 The brief note of grounds of detention in the case of Rustam Ali Sarkar of District Murshidabad only mentioned :

"He owns about 10/12 bighas of land. Due to poverty of his father he could not prosecute his studies further. As he grew up, he took to cultivation and began to cultivate his father's lands. He has considerable influence on the rowdies of his locality."

In the case of Mohindra Nath Singh the grounds were:

"He is an Assistant Fitter in Krishnapore Railway Loco Shed under P.S. Lalgola. He gets Rs. 315 p.m. from the Railway service. He associates with the rowdies of Lalgola."

Similarly the only adverse thing mentioned against Maidul Islam of District Murshidabad, was, "He associates with the local rowdies." In the case of Barun Kumar Bhaduri, the grounds mentioned were that he had been involved in a criminal offence in

1964 and on March 5, 1977 a complaint was lodged with the police, about his having assaulted some members who were campaigning for the Congress candidate Shri P. R. Das Munshi. The same ground was given in the case of Bhabesh Bhattacharjee of Calcutta.

19.361 As regards review of detention cases pertaining to Section 16A of the MISA, informal Regional Committees comprising 2 or 3 Ministers of State or Deputy Ministers were constituted by the State Government *vide* Home Department order No. 16402(16) dated September, 11, 1975. Different districts were grouped together and placed in charge of a Regional Committee. However, final orders in review were passed by the State Minister for Home in respect of all districts except Calcutta City which was kept in the charge of the Chief Minister.

19.362 These committees were constituted for the statutory four monthly review. But scrutiny of files pertaining to the proceedings of the Regional Committee has revealed that these committees did not meet regularly. The cases were processed for presentation before the Committee but on many occasions, it was recorded on the files that the Ministers concerned could not be contacted despite best efforts. Statements of detention cases were prepared for each review, showing the date of detention and opinion of the detaining authority regarding the continuation of detention or release of the detenus. In the last column the recommendations of the Regional Committee were to be recorded. But it was seen from the files that in quite a large number of such statements, no recommendation of the Committee was recorded. However, four-monthly review of detention cases was done regularly by the Home Department. The detention cases were put up by the Department for review to the State Minister for Home who passed the final orders. But in the note put up to the Minister, no mention was ever made of the recommendations of the Regional Committee. Only the opinion received from the detaining authority was mentioned. In most cases the decision to continue or revoke the detention was in accordance with the opinion given by the detaining authority.

19.363 In cases which were considered by the Regional Committees, it was seen that mostly the Committee also went by the opinion of the detaining authority. In 24 cases, the detention orders were revoked by the State Government before the expiry of 4 months from the date of detention.

19.364 In addition to the 311 cases of detentions made by invoking Section 16A of the MISA, 4681 detention orders were issued under the unamended provisions of the MISA during the period of emergency in the State. Out of these 4084 persons were actually detained. All these cases were referred to the Advisory Board as required by law. In 735 cases the Advisory Board did not give its approval for confirmation of the detention order as they did not find the grounds of detention to be proper or sufficient. Consequently, the detenus were released by the State Government.

19.365 West Bengal was the only State in which the unamended provisions of the MISA were used to detain persons on a large scale, during the emergency.

19.366 There were not many cases of requests for parole being refused with regard to the persons who were detained by invoking Section 16A of the MISA. However, in 3 cases parole was refused as the detaining authority objected to the release of the detenu on parole. Narayan Ch. Mallick, District Secretary, RSS, Howrah, requested for parole on February 4, 1976 on the grounds of illness of his old mother. It was rejected as the District Magistrate opposed it. Later his mother expired on March 1, 1977 and on March 2, 1977 he was granted 7 days parole to attend the ceremonies.

19.367 The mother of detenu Dibaker Roy of District Burdwan requested for parole for her son on September 1, 1976 for settling his daughter's marriage. The opinion of the detaining authority was obtained. The District Magistrate reported on the basis of Police enquiry that detenu's mother was 70 years old and he was the only earning member in the family. He would maintain the family by dealing in paddy in a clandestine manner. Hence his release on parole was not recommended. The request was rejected.

19.368 In some cases in which the District Magistrate opined against the release of a detenu in four monthly review, the Regional Committee recommended release on long parole of 1 to 3 months and such parole was granted. (Case of Bijoy Kumar Sain of District Burdwan. He was granted 3 weeks' parole on September 25, 1976 which was continuously extended till his final release).

19.369 With regard to the persons detained under the unamended provisions of MISA, request for parole was refused in about 50 cases. In almost all these cases, parole was requested on grounds of illness of near relative like father, mother, wife and son but the detaining authority reported that the illness was not serious or that there was no illness. (Cases of Abdul Hakim of Malda, Nikunja Ray of Murshidabad, Hafizuddin Mondal of Burdwan, Kalu Sheikh of Nadia). Farid Sheikh of Murshidabad requested for parole on the ground of illness of his wife. His request was rejected because the District Magistrate opposed it on the ground that he was a dangerous criminal and if released might resort to crime. In many cases, parole was also granted for attending Shraddh ceremony of father, mother and grandfather.

ANDAMAN & NICOBAR

19.370 According to the information supplied by Andaman & Nicobar Islands Administration, the figures of arrests and detentions in Andaman & Nicobar during the period of emergency are :

MISA	41
COFEPOSA	Nil
DISIR	88

19.371 Scrutiny of MISA cases has revealed that 48 detention orders involving 47 persons were issued during the period of emergency. One Shri V. K. Hamza was detained twice. 6 persons could not be detained. As such 41 persons had actually been detained. All the detention orders were issued in the context of emergency invoking section 16A.

19.372 Category-wise break up of the 41 detenus, as furnished by the Andaman and Nicobar Administration, is given below :

- | | |
|---|-----------------------------------|
| (i) Members or associates of banned organisations | 28 (16 of Anand Marg & 12 of JEI) |
| (ii) Members or associates of Political Parties | Nil |
| (iii) Others | 13 |

19.373 Records show that the third category comprising mainly the alleged economic offenders and anti-social elements, included two leaders of a political organisation called "Indira Brigade" which came into existence in the Islands after the split in the local Congress leadership.

19.374 There were one journalist, three students and 15 public servants among the detenus.

19.375 It will be clear from the above that two thirds of total detentions were ordered in respect of the alleged members of the banned organisations. It has been intimated by the Andaman and Nicobar Administration that after the receipt of the instructions from the Government of India regarding the banning of certain political parties and organisations, a meeting was held on July 4, 1975 under the chairmanship of the Chief Secretary which was attended by the District Magistrate and the Inspector General of Police. It was decided to detain 16 Anand Marg and 9 JEI workers. The names of these persons along with the grounds of detention were sent by the Inspector General of Police to the District Magistrate on July 4, 1975 and he issued detention orders on the same day. It is also seen that detention orders in respect of 10 more persons including 9 alleged members of the banned organisations were issued by the District Magistrate on July 5, 1975 on the basis of another list sent by the Inspector General of Police on the same day. The grounds of detention forwarded by the Inspector General of Police are found to have merely mentioned the alleged association of the individual concerned with the banned organisation—Anand Marg or JEI—without showing any specific activities of the person in support of these allegations.

19.376 The following detention cases are noteworthy :—

(I) S/Shri M.B.A. Rashid, V. K. Khalid and N. Moosa were detained under the orders of District Magistrate, Andamans, issued on July 4, 1975. Grounds of detention in respect of these persons as furnished by the Inspector General of Police to District Magistrate and sent by the latter to the Adminis-

tration after issuing detention orders are reproduced below :—

- (1) *Shri M. B. A. Rashid*
"He is a staunch Jamat-e-Islamite".
- (2) *Shri V. K. Khalid*
"An extreme supporter of Jamat-e-Islami. Does anti-Government propaganda and collects money in the name of Jamat-e-Islami from the public."
- (3) *Shri N. Moosa*
"A supporter of Jamat-e-Islami. Collects funds from the villagers."

The Administration confirmed these detention orders on July 10, 1975. Scrutiny has revealed that the above-mentioned persons were arrested at Mallapuram in Kerala on August 20, 1975 and brought to Port Blair. Shri P. Mohd. Koya, General Secretary, Kerala Muslim Association, Port Blair sent a petition to the Chief Commissioner on September 15, 1975 requesting him to intervene in the detention of these boys aged between 12 and 16 who were sent by the Kerala Muslim Association to the religious institution at Mallapuram for religious education in Arabic medium. The District Magistrate and Inspector General of Police were asked on September 20, 1975 to furnish their comments on this petition. Scrutiny has revealed that their cases were reviewed in the Review Committee meeting held on September 22, 1975 which was attended by the District Magistrate and the Inspector General of Police and detention orders were revoked on the same day on the ground that their "detention was no more required for dealing effectively with Emergency". CID records were examined to ascertain the information available with the police in support of the grounds of detention of these persons in regard to their JEI activities. These records reveal that there is only one entry according to which Shri M.B.A. Rashid participated in an indoor meeting of JEI on October 6, 1974. As regards S/Shri Khalid and Moosa mentioned above, there are three entries in the year 1973 and two in 1974. These entries merely record the information regarding the arrival and departure of these boys from their school in Kerala and back during the summer vacations. There is not even a mention of JEI in these entries in respect of the two persons named above.

(II) Shri Mukand Mondal was detained on July 10, 1975 on the basis of the orders issued by the District Magistrate, Andamans, on July 5, 1975 on the ground that he was a member of "Anand Marg Pracharak Sangh". No details of any activities in support of this allegation were given in the one sentence comprising the grounds of detention. The name of his father was also not mentioned in the detention order. The orders were confirmed by the administration on July 10, 1975. It is seen that Shri S. M. Krishnatry, Chief Commissioner, recorded the following u.o. not on September 20, 1975 and marked it to the Chief Secretary, Inspector General of Police and the Deputy Commissioner :—

"I understand that one Mukand Mondal was arrested in connection with banning of the

Anand Marg. It has been reported that the person concerned with Anand Marg was one 'Mukand Majhi' and not 'Mukand Mondal'. If a genuine mistake has been made in regard to the identity, action should have been taken automatically to release the innocent person. Necessary enquiry may be made and action taken accordingly now".

Scrutiny of concerning files of the Administration Secretariat, Deputy Commissioner and Inspector General of Police did not reveal any evidence of an enquiry having been made in this regard as ordered by the Chief Commissioner. Scrutiny of CID records revealed that the name of Shri Mukand Majhi son of Shri Yogesh Majhi had figured in two reports sent by SI Special Branch, Rangat, on May 10, 1974 and July 15, 1975 where it was mentioned that he was a prominent worker of Anand Marg at Nimbootala. Nothing is found in CID records against Shri Mukand Mondal except the mention of his name in one list of sympathisers of Anand Marg at Rangat. His parentage was not mentioned in this list. This list is undated and bears no signatures and reveals no details of association of Shri Mukand Mondal with Anand Marg. The case of Shri Mukand Mondal was reviewed in the Review Committee meeting held on September 22, 1975 and the order was revoked on the same day on the ground that "his detention is no more required for dealing effectively with Emergency." Since the detailed proceedings of this Review do not appear to have been recorded, the reasons prompting the Administration to revoke the detention order in respect of Shri Mondal could not be known.

(III) S/Shri Suleman and P. P. Kuriakose, Fair Price Shop owners, were detained under the orders of District Magistrate, Andamans, passed on July 3, 1975 on the ground that they were engaged in black-marketing and hoarding of essential commodities. Shri A. Krishnan Nair, another alleged economic offender was detained on July 5, 1975 for his failure to display the stock position and price of the essential commodities and indulging in hoarding and black-marketing. Another Fair Price Shop owner, Shri Santhyago was detained on August 5, 1975 on similar grounds. All these detention orders were confirmed by the Administration. The case of Shri Suleman was one of the cases reviewed on September 22, 1975 and his detention order was revoked the same day on the ground that "his detention was no more required for dealing with the Emergency". The cases of S/Shri P. P. Kuriakose, Krishnan Nair and Santhyago were considered in the Review Committee meeting of December 9, 1975 and it was decided to release them on parole for a period of six months. Orders to release these persons on parole for six months were accordingly issued on December 22, 1975 and they were released on parole on the same day. The concerned files show that though the period of their parole expired on June 22, 1976, these persons continued to remain free throughout the period of emergency without any order for extension of the period of parole. It is also seen that the detention orders in respect of these persons were not revoked at all. In fact, as per records, these orders are yet to be revoked.

19.377 Of the 48 detention orders issued in Andamans and Nicobar during the period of emergency, two were issued directly under the orders of the Administrator. 46 detentions were ordered by the District Magistrate, Andamans. The detentions ordered by the District Magistrate in the context of emergency were required to be confirmed by the Administrator within 15 days. It has been reported by the Administration that only in one case, namely that of Shri B. C. Bhattacharya, the declaration issued by the District Magistrate was not confirmed. As such, 45 detention orders of District Magistrate were confirmed by the Administration.

19.378 Shri B. C. Bhattacharya, an employee of PWD, was detained under the orders of District Magistrate, Andamans, passed on July 5, 1975 on the following grounds :—

"He is an active trade unionist of these Islands with communist leaning. He is having close contact with ultra leftist parties and CPM leaders like S/Shri Jyotirmoy Bosu, George Mathew and Mohd. Ilyas. He is active in organising and preparing the members of the Trade Unions for agitations and strikes etc. of late, he had been active in trying to incite the workers presently engaged in the construction of Great Andaman Trunk Road at Jirkantang. The road is of very vital importance for economic development as well as from the defence point of view. He is an extremist and highly anti-Government. A man of short temperament."

Shri Bhattacharya was taken into custody on the 5th July, 1975. The District Magistrate, Andamans and Nicobar Islands referred the case to the Administration on July 6, 1975 for the confirmation of the detention order. Scrutiny has revealed that before the orders of the Chief Commissioner could issue, the District Magistrate wrote to the Chief Commissioner on July 9, 1975 that "the grounds on which he was detained do not exist any more, since the workers presently engaged in the construction of the great Andaman Trunk Road on Jirkantang are not susceptible to his influence under the present circumstances. He will not be able to incite the workers to that area in the immediate future and his further detention is not called for". The District Magistrate requested the Chief Commissioner to approve the release of Shri Bhattacharya. This was approved by the Chief Commissioner and the Administration wrote to the District Magistrate on July 10, 1975 informing him that he was competent to issue the revocation order in this case. The District Magistrate revoked the detention order on July 10, 1975 and Shri Bhattacharya was released.

19.379 Scrutiny has revealed that in the case of detentions ordered by the District Magistrate in early July 1975, the copies of the declarations issued by the District Magistrate under section 16A were not forwarded to the Administration. In fact, in respect of the orders issued on July 4 and 5, 1975, the District Magistrate did not forward to the Administration even the copies of the detention orders. He has simply

sent a u.o. note informing the Administration about issue of 25 retention orders on 4th and 10 on 5th July, 1975 and enclosed a sheet giving the grounds of detention in respect of these persons.

19.380 Pointing out the omission of declarations under section 16A in the cases of S/Shri Suleman and P. P. Kuriakose detained on July 3, 1975, Shri M. R. Malik, Judicial Secretary, recorded on July 8, 1975, that :

"Copies of the two detention orders of DM clearly indicate that DM has issued them having been satisfied that the detentions are necessary for dealing effectively with the emergency. But in the said detention order, DM has not made the specific declaration that the detention is necessary for dealing effectively with the emergency. It is also the requirement of the Ordinance that the copy of the declaration is communicated to the detenu. So if the order does not specifically show that the detaining authority has made the said declaration the copy of the order communicated to the person concerned would not indicate that such a declaration has been made by the detaining authority, according to the amended provisions of MISA, so long as such declaration remains in force, provision regarding sending the detenu to the Advisory Board for review of the detention order does not take effect. So a vital right of the detenu has been taken away. Therefore, strict compliance of the amended provisions of MISA has to be made by the detaining authority, otherwise there is every possibility of the order being struck down by the High Court or Supreme Court only on the ground that the declaration has not been made by the detaining authority that the detention is necessary for dealing effectively with emergency. The attention of the DM may be drawn to this aspect of the matter."

This was approved by the Chief Commissioner and the Chief Secretary wrote demi-officially to the District Magistrate, Andamans directing him to ensure compliance with the requirements of Section 16A of the MISA. Scrutiny of files of these persons in the office of the District Magistrate has revealed that the required declarations under Section 16A were made by the District Magistrate but the same were not dated. Records do not show that these declarations were served on the detenus. In fact, none of the declarations issued by the District Magistrate appear to have been served formally on the detenus concerned.

19.381 Scrutiny has revealed that four-monthly statutory reviews of MISA cases were conducted by a Committee consisting of the Chief Commissioner as Chairman and Chief Secretary, Inspector General of Police, Deputy Commissioner, Judicial Secretary and Deputy Central Intelligence Officer, as members. The same committee met occasionally to consider the representations received from or on behalf of the detenus without waiting till the due date of the next statutory review. This committee had met 8 times

during the period from September 22, 1975 to January 22, 1977 and 24 persons were released on its recommendations. The details of the proceedings of the first Review held on September 22, 1975 leading to the release of 7 persons do not appear to have been recorded. The decision to release these persons was based on a brief note of the District Magistrate duly approved by the Chief Commissioner to the effect that it was decided to release these persons since their detention was "no more required for dealing effectively with emergency". Proceedings of all the other Reviews were recorded in detail. Scrutiny has revealed that the Government of India did not accept the proposal of the Administration for the release of S/Shri B. K. Samadar, Harendranath Majumdar, Mani Mohan Dutta and Hari Singh Rathore who were recommended for release by the Review Committee which met on November 1, 1975. However, these cases were reviewed again in the next Review Committee on March 31, 1976 and the Government of India was approached again. Government of India accorded approval and they were released on May 19, 1976. In the case of Shri Natwar Bachar detained on July 6, 1975, the Review Committee recommended his revocation and Government of India was approached on June 22, 1976 for approval for his release. The Government of India wrote on July 15, 1976 that it did not consider outright release of Shri Natwar Bachar appropriate and advised the Administration to release him on parole for 2 months. Shri Natwar Bachar was accordingly released on parole on August 6, 1976. He was granted parole again for three months with effect from November 1, 1976 after obtaining approval from Government of India. His detention was revoked on February 20, 1977 after the review of the case in the light of the fresh instructions received from the Ministry of Home Affairs.

19.382 Most of the detenus had been released by February 19, 1977. There were only 6 persons in custody on March 21, 1977. Orders in respect of these persons and 2 parolees—S/Shri P. K. Biswas and P. K. Mohd. Ali were issued on March 21, 1977.

19.383 Scrutiny has revealed that only 7 out of the total of 41 detenus were released on parole. 4 of them were alleged economic offenders who were released on parole for six months on December 22, 1975. They continued to remain free even after the expiry of the period of parole. One Natwar Bachar, an alleged Anand Marg worker, was released on parole twice, once for two months and then for 3 months after obtaining approval of the Central Government. Shri P. K. Mohd. Ali of JEI was released on parole for 2 months on January 1, 1977. Shri P. K. Biswas, an Anand Margi, was released on parole for six months on January 22, 1977. Parole was granted in these cases on the recommendation of the Review Committee. Scrutiny has revealed that S/Shri Biren Haldar and R. Shanti Krishna, leaders of the Indira Brigade, were recommended by the Review Committee for release on parole and orders granting them parole for 2 months were issued on January 22, 1977. However, Shri Shanti Krishna refused to be released on parole and sent the petition to the Chief Commissioner requesting for his unconditional release. Shri Biren Haldar did not avail of the parole granted

to him. Their orders were revoked on February 6, 1977 after review of their cases in the light of the fresh guidelines received from the Government of India.

19.384 The case of Shri P. K. Mohd. Ali son of Shri Kunji Haji, an alleged JEI detenu is noteworthy. He was detained on July 4, 1975, under the order of District Magistrate, Andamans. One P. K. Moideen sent a petition to the Additional District Magistrate, Andamans and Nicobar Islands on September 17, 1976 saying that : "my brother P. K. Ali resident of Wimberley Gunj has expired today at 11 a.m. in our house at Wimberley Gunj. One of my brothers P. K. Mohd. is at present a detenu in District Jail in connection with MISA case. I, therefore, humbly request you, Sir, that my brother P. K. Mohd. may kindly be allowed to see at least the dead body of our deceased brother P. K. Ali today itself as he was in the District Jail since last one year. If necessary, he may be brought by police escort". This was certified by S/Shri K. T. Mammani and M. Mohd. Village Chaudhari of Bambooflat. Shri O. S. Chauhan, District Magistrate, Andamans, made the following endorsement on this petition on September 17, 1976 :

"This may be allowed under police escort on humanitarian grounds and he should be brought back to the jail by 9 p.m. today."

The file shows that the Superintendent Jail Port Blair wrote to the Inspector General (Prisons) on September 17, 1976 that:

"According to your telephonic instructions, P. K. Mohd. detenu has not been allowed to proceed to Wimberley Gunj and the direction of the District Magistrate allowing P. K. Mohd. to Wimberley Gunj under police escort has not been complied with. The applicant Shri P. K. Moideen has been informed that the orders of the State Government are necessary. Application of Shri P. K. Moideen in original is enclosed herewith."

Shri P. K. Mohd. thus could not see the dead body of his brother Shri P. K. Ali who died on September 17, 1976 as he was not permitted to leave the jail.

ARUNACHAL PRADESH

19.385 According to the information supplied by the Arunachal Pradesh Administration in reply to the Commission's questionnaire, no detentions under MISA or COFEPOSA were made in Arunachal Pradesh during the period of emergency. However, one Shri Raj Nandan Singh was arrested under DISIR on December 9, 1975 and released on December 15, 1975. He was allegedly found in possession of a banned publication 'Swaraj'.

CHANDIGARH

19.386 According to the information supplied by the Chandigarh Administration, the number of arrests

and detentions in the Union Territory of Chandigarh during the period of emergency are:—

MISA	27
COFEPOSA	1
DISIR	74

19.387 Categorywise break-up of MISA cases is given below:—

(i) Members or associates of banned organisations	6
(ii) Members or associates of Political Parties	15
(iii) Others	6

The third category includes one person detained for his alleged involvement in immoral traffic in women, one for allegedly trading in intoxicating drugs and pills, one alleged cheat and travelling agent and three alleged smugglers of opium and charas.

BJS with 14 and RSS with 4 detentions account for 66 per cent of the detentions under MISA.

19.388 Powers under MISA were used only from the 5th July 1975 onwards. It has been reported by the Chandigarh Administration in reply to the Commission's questionnaire that the list of persons considered necessary for detention under MISA was prepared on July 4, 1975 keeping in view the instructions issued by the Ministry of Home Affairs, vide their message No. 680/JS(SF)/75, dated June 26, 1975, advising the State Governments and Union Territories to detain the influential and active elements of BJS and RSS under MISA. According to the information supplied by the Chandigarh Administration, 35 persons were arrested in connection with the emergency during the period from June 25 to June 30, 1975—25 under section 107/151 Cr. P.C., 5 under section 107/150 Cr. P.C. and 5 under section 188 IPC and Rule 43 DIR. This included three leaders of RSS and 7 of BJS. MISA was not used at all against political elements after February 1976. In almost all the cases of political detentions, some immediate provocation is shown to have been caused to the administration by the detenus through their anti-emergency utterances. Most of them were arrested first under 188 IPC for defying the prohibitory orders imposed immediately after the promulgation of emergency and then detained under MISA. Grounds of detention of these persons mention specific activities which were proximate to the time of their detention.

19.389 The Administration restrained the District authorities from taking recourse to MISA to deal with problems which according to the administration could be handled by exercising powers available under the normal law. Files show that the SSP Chandigarh had sent a proposal for the detention of 20 alleged criminals and anti-social elements, under MISA. The proposal was critically examined by the Legal Remembrancer in the light of the scope of MISA, its legal requirements and the nature and gravity

of the alleged prejudicial activities of the persons concerned. Thoroughness of this scrutiny can be assessed from the fact that only one case was approved and 19 were turned down by the Administration.

19.390 In all the 27 cases of detention under the MISA in Chandigarh during the period of Emergency, the arrest was ordered by invoking Section 16A of the Act. No detenu was thus informed of the grounds of his detention. 4 detentions were made under the orders of the Chief Commissioner and 23 detention orders were issued by the District Magistrate, Chandigarh. All the detentions ordered by the District Magistrate Chandigarh were confirmed by the Chief Commissioner within the stipulated period of 15 days.

19.391 Four-monthly reviews of MISA cases were conducted by a Committee with the Chief Commissioner as Chairman and Home Secretary, District Magistrate, Chandigarh, SSP, Chandigarh and Legal Remembrancer, Chandigarh Administration, as members. This Committee used to meet from time to time and review the detentions in the light of the instructions issued by the Government of India. The minutes of the deliberations of this Committee were recorded by the Legal Remembrancer and put up to the Chief Commissioner for orders. Matters relating to grant of parole to the MISA detenus were also decided by this Committee. The effectiveness of this Committee can be judged from the fact that 17 political detenus out of the total of 21 were released as a result of recommendations of this Committee. In a few cases, however, the Government of India did not readily agree with the recommendations of the Chandigarh Administration to release some political detenus whose cases had been reviewed by this Committee. Such persons were released only in January 1977 when the State Governments and Union Territories were allowed to review their cases in the light of the relaxation made in the measures of Emergency. This will be clear from the following:

- (i) The case of Shri Prem Sagar Jain of BJS detained on July 17, 1975 was reviewed in August 1976 and the Government of India was requested to accord approval for his release. The Government of India turned down the proposal in September 1976 and instead advised the Chandigarh Administration to extend the period of parole already granted to Shri Jain. Detention order in respect of Shri Jain was revoked on January 24, 1977 after the review of his case by the Chandigarh Administration in the light of the fresh instructions received from Government of India regarding release of political detenus.
- (ii) Shri Surinder Mohan detained on December 19, 1975 for his BJS/RSS activities was recommended for release by the Review Committee and Government of India was requested on January 17, 1977 to accord approval for the same. File shows that the recommendation was based on an undertaking given by Shri Surinder Mohan on July 24, 1976 to the effect that he had resigned

from the BJS and would not join it again in future. The Central Government rejected the proposal of the Chandigarh Administration on January 26, 1977. Shri Mohan was released on March 22, 1977. Similarly the case of Shri Krishan Kumar Baweja of RSS recommended by the Chandigarh Administration was also turned down by the Ministry of Home Affairs and Shri Baweja was released only on March 22, 1977 after revocation of Emergency.

- (iii) Shri Kishan Lal Manchanda, detained on July 17, 1975, was recommended for release by the Review Committee and Government of India was requested on October 30, 1976 to accord approval for the same. No approval was received from the Ministry of Home Affairs till January 17, 1977 when the Administration revoked the order on its own, after reviewing the case in the light of the fresh instructions from the Government of India. Similarly in the case of Shri Des Raj Tandon of BJS, no reply was received from the Government of India to the proposal for his release sent by the Chandigarh Administration on October 29, 1976 based on the review of his case. The Administration revoked this order after making a fresh review of the case on January 24, 1977.
- (iv) Shri Ram Swarup Sharma of BJS detained on August 14, 1975 was recommended for release by the Review Committee which met on October 4, 1976. A letter was written to the Ministry of Home Affairs on October 30, 1976 seeking their approval for the release of Shri Ram Swarup. The Ministry of Home Affairs wrote back on January 3, 1977 advising the Administration to extend the period of parole of Shri Sharma instead of releasing him as he was a committed party worker of BJS. Chandigarh Administration revoked the order on January 13, 1977 after making a fresh review in the light of the instructions from the Government of India to relax the rigours of Emergency and release the political detenus.

19.392 The case of Shri Ravinder Sehgal, detained on July 17, 1975 on account of his BJS activities is also noteworthy. A representation for his release was made by his wife, Smt. Kamla Sehgal. This was received through the Ministry of Home Affairs. The Administration did not recommend the release of Shri Ravinder Sehgal but the Ministry of Home Affairs wrote on December 30, 1975 saying that—"It appears that he (Shri Ravinder Sehgal) was initially arrested on June 29, 1975 under section 188 of IPC for raising slogans against Emergency. In cases of this type the Administration could have secured conviction instead of detaining a person under MISA. As nothing adverse had come to the notice the Government has no objection to his release from detention." The Chandigarh Administration sent a TP message to the Home Ministry on January 23, 1976 saying that the detenu till then had not furnished any assurance regarding severance of his connection with the political

activities. The Administration could, therefore, not consider his release in the light of the guidelines issued by the Ministry of Home Affairs on October 10, 1975. The Ministry of Home Affairs was asked to clarify whether Shri Sehgal could be released even without his furnishing the requisite bond. The Ministry of Home Affairs replied on March 27, 1976 that Shri Sehgal need not be released without his executing the bond. Shri Sehgal furnished the required assurance on July 13, 1976 and declared his support to the 20 point programme. Detention order was revoked on September 21, 1976 after obtaining the approval from the Ministry of Home Affairs.

19.393 All the political detenus had been released by the end of January 1977. 6 persons detained on account of their anti-social activities were also released on February 24, 1977 after reviewing their cases in the light of fresh instructions from the Government of India. There were only 4 detenus—3 of RSS and one of Anand Marg, held in custody on March 21, 1977 when the emergency was revoked and their orders were cancelled.

19.394 Scrutiny of MISA files of Chandigarh Administration has revealed that the Administration was very considerate to the detenus in the grant of parole. Almost all the political detenus were granted parole whenever their requests were found genuine. As per the replies received from the Chandigarh Administration to the Commission's questionnaire, there was only one significant case of refusal of parole and the same is given below :

19.395 Shri Ram Swarup Sharma, a BJS leader of Chandigarh, was detained under MISA on August 14, 1975. He applied on November 4, 1975 for parole for 10 days on the ground of death of his father-in-law at Jammu on November 3, 1975. File shows that the District Magistrate Chandigarh had asked for the comments of the SSP Chandigarh on November 4, 1975. The SSP Chandigarh wrote back on November 5, 1975 that "I understand there is no provision in MISA to release a detenu on parole. I have no objection for the release of Shri Ram Swarup on parole if there is any provision in MISA". SSP Chandigarh was evidently ignorant of the provision of temporary release of MISA detenus provided under section 15 of the Act. No action appears to have been taken by the District Magistrate after the receipt of the above report from the SSP Chandigarh. Subsequently, the Ministry of Home Affairs asked the Chandigarh Administration to give its comments on the following news item which had appeared in a Chandigarh newspaper:

"Parole not granted even on death"

The father-in-law of Shri Ram Swarup Sharma, President, Chandigarh Jana Sangh, died on Diwali day. Shri Sharma applied for parole to participate in the cremation and other mourning ceremonies. But release on parole was not allowed even though some friends of his showed willingness to furnish bail bonds to the extent of Rupees fifty thousand for securing release of Shri Sharma on parole. The callousness of the situation is apparent from the fact that

Shri Sharma was not given any information on his application for parole."

19.396 The Chandigarh Administration asked the District Magistrate for a factual report. The District Magistrate, Chandigarh replied on February 16, 1976, that—"the release on parole of Shri Ram Swarup Sharma son of Shri Mani Ram Sharma was rejected in view of the anti-Government and anti-emergency activities".

19.397 Shri Ram Swarup Sharma applied for parole again on January 15, 1976, on the ground of death of his brother-in-law who died at Bhatinda the same morning. The District Magistrate, Chandigarh asked for the comments of SSP Chandigarh on January 16, 1976. The SSP Chandigarh forwarded on January 22, 1976, the report of the Dy. SP saying that "Shri Ram Swarup Sharma, Advocate, is the President of BJS Chandigarh. He has been detained under MISA since August 15, 1975, on account of his anti-emergency activities. Since BJS has not yet withdrawn its activities against the emergency, it does not seem advisable that he may be allowed to go on parole. The possibility of his meeting with anti-Government forces cannot be ruled out. Grant of parole to him is, therefore, not recommended". District Magistrate filed the case on January 28, 1976. No intimation seems to have been sent to the applicant regarding the decision on his request. It may also be mentioned that the power to grant parole vests with the "appropriate Government", which is the Chief Commissioner in the case of Union Territory of Chandigarh. The District Magistrate was not competent to dispose of the request for grant of parole at his own level.

DADRA AND NAGAR HAVELI

19.398 According to the information furnished by the Administration, there were no detentions under MISA in the territory during the period of emergency. Two persons were detained under the COFEPOSA and three under the DISIR.

DELHI

19.399 According to the information supplied by the Delhi Administration, the figures of arrests and detentions in Delhi during the period of emergency are:—

MISA	1,012
COFEPOSA	48
DISIR	2,851

The subject has been covered in detail in Chapter XI of the Second Interim Report of the Commission.

GOA ADMINISTRATION

19.400 Total number of detentions ordered under MISA, DISIR and COFEPOSA in the territory was as below:

MISA	113
COFEPOSA	68
DISIR	Nil

The break-up of detentions ordered under MISA is as follows:—

RSS	8
Anand Marg	1
BJS	9
Others including anti-socials & criminals	95

Out of the total number of 113 persons detained under MISA, 10 were Pakistani nationals. No one belonging to a political party other than BJS was detained. There were no detentions of MLAs and MPs.

19.401 In majority of cases the District Magistrate passed the orders of detentions. There were some cases in which the Lt. Governor passed orders of detention on the basis of reports put up by the Home Department at the instance of Inspector General of Police and on the basis of discussions with the senior officers like Chief Secretary, Inspector General of Police, etc. It was noticed that the District Magistrate, Goa, only sent copies of detention order and declarations made by him to the State Government. He did not send any grounds of detention along with these copies. No separate report as required under Section 3(3) of the MISA was sent by him to the Government. At the Government level, it was seen that grounds of detention were sent separately by the SP to the Home Department. These were in the form of a dossier in which the life history of the detenu was given right from the birth. Most of the details given in this dossier were irrelevant for the purposes of detention under MISA. Only in the concluding paragraph of the dossier, alleged objectionable activities of the person concerned were mentioned. However, in case of criminals and anti-socials a list of several criminal cases in which the person was alleged to have been involved was given. This dossier as available in the files is an unsigned typed sheet. It is, therefore, not clear whether the SP had personally got this dossier prepared or simply forwarded it mechanically to the Administration. This dossier was apparently treated as the grounds of detention. There was no scrutiny of cases by the Law Department.

19.402 It is also not clear on what basis the District Magistrate used to pass the orders of detention because in his covering letter to the Government, he neither mentioned the grounds of detention, nor referred to any material which might have been produced by the police before him. In the Home

Department a note was put up mentioning briefly the activities stated in the dossier and it was submitted to the Lt. Governor through the Chief Minister, Goa. Being a Union Territory, the powers of confirming detention under MISA were exercised by the Lt. Governor. In all cases the Administration confirmed the orders of detention passed by the District Magistrate and there was no case in which the order of District Magistrate was not confirmed.

19.403 As is clear from the break-up given in para 1, there were very few detentions on political grounds in this Territory. BJS was the only political party whose 9 members were detained. Next came RSS with 8 detentions. In the case of these two, it was seen that most of the detentions were ordered on the ground of participating in Satyagraha of Lok Sangharsh Samiti on November 18, 1975. In some of the cases participation in Satyagraha was not alleged but it was mentioned that the detenu was a member of BJS/RSS; it was a constituent of the Lok Sangharash Samiti and he was detained in order to prevent further agitation by the Samiti.

19.404 Detention of 8 persons, seven alleged to be RSS activists and one alleged to be active Anand Margi were ordered directly by the Government. The note, dated July 4, 1975, of the Chief Secretary mentioned that the Government of India had issued a notification on July 3, 1975, making Rule 33 of the DIR applicable to 4 organisations. The note went on to say:

"In respect of RSS, there are certain branches but they are functioning under the direction of their headquarters at Ratnagiri. So far their activities are negligible and their influence over the people here is also considered to be almost nil. This was the reason why we have not acted upon when message was received earlier. However as the Government of India has by Notification declared these organisations as illegal, there is no option but to take action to the extent necessary. Till Notification of Government of India was issued, they were not illegal organisations and they became illegal only thereafter and that there must be some material to prove that they are violating Rule 33(3) of the DIR. It is not possible to find out what they could have exactly violated during the short period. It was therefore considered necessary that their detention orders may be issued under MISA and according to the Ordinance it is not necessary to give reasons for the detention and it is enough to make the declaration that their detention is necessary for effectively dealing with emergency. A draft has been prepared for ordering arrest of such persons."

The note gives the names of 8 persons seven alleged to be RSS activists and one Anand Margi. The note does not reveal from where these names were obtained. This note further shows that the Government were fully aware that there was nothing objectionable on record against these persons and they were detained

simply because they belonged to the banned organisation. The names of these 8 persons are as below:

S/Shri

1. Datta B. Naik
2. Prakash Coulekar
3. Yeshwant Dhon
4. Bhasker Sapre
5. Gurudas Kashinath Bandekar
6. Balkrishna S. Azrekar
7. Anand Vinayak Chonekar
8. Avadhoot Asheshanand.

19.405 The grounds mentioned in the dossier of these persons are, therefore, quite vague and insufficient for the use of MISA. In the case of Kashinath Bandekar, a student, the activity mentioned was "He was engaged in imparting Lathi drills and other physical exercises to the Shakha members." In the case of Prakash Coulekar also, it was mentioned that he was imparting Lathi drill and took active part in organising a function for the RSS Chief, Shri Deoras on February 21, 1975. Similar general grounds were mentioned in all the above cases. The grounds only revealed that they belonged to RSS and nothing more.

19.406 In another case, 11 persons were detained directly under orders from the Government. They included some RSS people as well as anti-socials. The file reveals that the Inspector General of Police brought 12 cases for detention and the matter was discussed at the Government level. The Home Department's note mentioned that the District Magistrate could also order their detentions but in order to reduce workload and avoid one stage, they considered it necessary to issue their detention orders directly.

19.407 A number of persons were detained on grounds of criminal activities. Among them a large percentage was that of Matka gamblers. Among other criminals were those against whom various offences ranging from theft, assault, etc., were alleged. A majority of the cases of the criminal activities mentioned in the dossier were pertaining to year 1972, 1973 and 1974. The dossiers of these cases mentioned the criminal cases in which they had been involved in the past. In many cases of Matka gambling, no previous offence or conviction was shown and it was generally mentioned in the dossier that they had indulged in clandestine gambling business through agents and in such cases offences of gambling involving the alleged agents were mentioned. But neither the names of agents were given nor any material was produced to show that they were really agents of the detenus.

19.408 Shri M. P. P. Hassan was detained on the ground of running a gambling den and indulging in Matka gambling but in the dossier of detenu's activities, no offence was mentioned. It was mentioned only in general terms that he had amassed wealth by illegal means and he was running a Matka den and was also carrying on Matka activities, but no incident was cited to support these allegations.

19.409 Shri Francisco Xavier Fernandes was detained on December 4, 1974. In the dossier most of the cases of the Gambling Act pertaining to the year 1973-74 were mentioned and it was stated that though he had not been convicted in any case so far, 5 cases were pending against him.

19.410 Shri Champaklal B. Modasia and his cousin Shri B. D. Modasia were detained on May 22, 1976. Their dossiers were identical. The dossiers gave a long history of their lives and activities but contained very little material to show any prejudicial activities. It was alleged that they were acting in collusion and instigating the members of the Kharwa community to commit violent acts. But no incidents were mentioned. It was also alleged that they had supported the Janta Morcha in Gujarat 1972 elections.

19.411 Four-monthly review of detentions was undertaken by a Committee comprising the Chief Secretary as Chairman and Judicial Secretary, District Magistrate, Inspector General of Police and Assistant Director of Intelligence Bureau, as members. The Committee submitted its recommendations to the Lt. Governor who passed final orders regarding continuing detention or revocation of the detenus. No case came to notice in which the Review Committee's recommendations were not accepted. Views of the detaining authority were also obtained and considered by the Review Committee.

19.412 All cases were put up to the Lt. Governor for passing orders on applications for release on parole. In their reply to the Commission's questionnaire, the Goa Administration has mentioned that Review Committee used to consider the cases from time to time. Those who were stated to be less troublesome were granted parole first and after watching their activities, the parole was extended from time to time. There were 53 cases in which the detenus detained in the earlier months of emergency were released on parole mostly after May, 1976, and this parole was continued till the final revocation of detentions in February or March, 1977. Among these, 5 belonged to the BJS, 4 belonged to RSS and the rest were anti-socials, mostly Matka gamblers. They were granted long parole on the ground of their being comparatively less troublesome. In a few cases parole was not granted even on grounds of illness, marriage or death of close relatives.

19.413 Shri Francisco Xavier Fernandes, whose case has been referred to in para 19.409 of this report, requested parole for one month to perform the obsequial ceremonies of his father who died on May 4, 1976. The Home Department put up a note on his application stating that he is a Catholic and it is not obligatory for a son to perform any death rites of his father. Moreover, rites are performed by the priest within a day after the death. Therefore, at the most one week's parole may be granted. The Chief Secretary noted on this, "The DM informed me that it becomes a problem involving expenditure on escorting the detenus." The request for parole was rejected.

19.414 Shri Urbano Almeida was detained on the ground of bootlegging activities. He requested for parole for the marriage of his cousin sister and it was mentioned that the girl had no brothers and the detenu was the only brother whose presence was necessary at the marriage. Home Department noted on September 3, 1976, "We have stopped giving parole for marriage." The request was rejected. Later, the detenu again asked for parole on the ground of illness of his son. On this application, the report of District Magistrate was called for but it never came and no further action was taken on the request.

19.415 Shri Jamnadas D. Sanglani detained on July 21, 1975, on grounds of involvement in Matka gambling, requested parole for performing the thread ceremony of his son. This was rejected on the ground that thread ceremony is not so urgent. Later, his second request for parole to attend his sister's marriage was rejected on April 24, 1976, on the ground that parole for attending marriages had been stopped.

19.416 Parole for attending weddings was stopped from the middle of 1976. No definite order about this is available.

19.417 It was seen that parole was not refused in the cases of political detenus.

LAKSHADWEEP

19.418 According to the information furnished by the Administration, no detentions under MISA, COFEPOSA and DISIR, were ordered during the period of emergency in this territory.

MIZORAM

19.419 In reply to the Commission's questionnaire on arrests and detentions during emergency, the following figures have been supplied by the Government of Mizoram :—

MISA	70
COFEPOSA	Nil
DISIR	136

19.420 Categorywise break-up of the MISA cases is given below :—

(i) Members or Associates of banned parties	Nil
(ii) Members/Associates of Political Parties	12
(iii) Others	58

The third category includes alleged economic offenders (30), members of outlawed organisations, such as, MNF, MNA and their collaborators and other anti-social elements. There were two women and 14 public servants among the detenus.

19.421 One of the notable features of detentions in Mizoram is that all the detention orders were issued

by the State Government and powers under MISA were not exercised by the District Magistrates. On that account, no question of confirmation of detention orders by the State Government arose. It is also found that all the detentions, political as well as non-political, were ordered on the basis of recommendations from the Inspector General of Police. 13 detenus out of the total of 70, were ordered under normal MISA and grounds of detention were communicated to the detenus concerned who were allegedly engaged in MNF activities. Two of these orders were revoked within 8 days. Remaining 11 cases were referred to the Advisory Board and all were upheld.

19.422 Only 12 political workers/leaders, 5 of Mizo Democratic Front and 7 of People's Conference, which are the regional parties of Mizoram, were detained under MISA. It is also significant to note that these detentions were ordered in May/June, 1976, and no one had been detained on political grounds till then. The grounds of detention refer to the association of these persons with the underground organisations.

19.423 30 persons, including 12 Government employees, were detained for the alleged commission of economic offences. These persons were engaged in the transshipment of Government rice from Mizoram Civil Supply Godown, Silchar, to various distribution centres in the State and had allegedly misappropriated huge quantities of rice causing hardship to the general public. 28 persons including two Government employees were detained for reasons of security of State. Grounds of detention show that these persons were allegedly lending active assistance to the underground organisations like MNF, MNA, etc.

19.424 Given below are some of the cases of detention under MISA in Mizoram during the period of emergency :—

- (i) Shri Rothan Vunga, Administrative Officer of Vairengte was detained under the orders of the Lt. Governor, Mizoram, dated May 13, 1976, for his alleged collaboration with the MNF elements. Information regarding his alleged anti-national activities had been received from the interrogation of one Shri Dinga son of Shri Rual Thankuma. Another person named Shri Lal Sanglura was also detained along with Shri Rothan Vunga on the basis of the same information. These orders were issued under normal MISA and grounds of detention were communicated to the detenus. Smt. Rokungi, mother of Shri Rothan Vunga, sent a petition on May 17, 1976 pointing out certain discrepancies in the grounds of detention. The file was put up to the Lt. Governor who recorded the following note on May 19, 1976 :—

"This case was not properly scrutinised in the Home Department. The grounds of detention have been mixed up with; one meant for Lal Sanglura has been served on Rothan Vunga. This case will

not stand the scrutiny by the Advisory Board. The detention order should be cancelled immediately. Thereafter, we may consider serving a fresh order on Shri Lal Sanglura. Regarding Shri Rothan Vunga it perhaps may not be necessary to resort to MISA as he can be dealt with departmentally."

The order in respect of both of them was revoked on May 21, 1976. The Inspector General of Police was asked to send a report on the activities of Rothan Vunga who was a Government servant. The Chief Secretary recorded on June 19, 1976 that the allegations against him based on a secret intelligence report, were not likely to permit normal disciplinary action and it was, therefore, decided to consider action under Article 311(2)(c) of the Constitution. A report from the Subsidiary Intelligence Bureau was called. The Assistant Director SIB wrote to the Chief Secretary on June 30, 1976 saying that "We have no information regarding the prejudicial activities of the above individual". In view of this report from the Central Intelligence agency functioning in Mizoram, action under Article 311(2)(c) against Shri Rothan Vunga was, therefore, not initiated.

- (ii) Shri Lallianzuala Salo of the Peoples Conference was detained under the orders of Lt. Governor Mizoram dated June 2, 1976. It was mentioned in the grounds of detention that he had joined Mizo National Front in 1965 and a case under section 121 I.P.C. was registered against him in 1968. He was elected the General Secretary of Human Rights Committee in 1974 (this Party was later converted into the Peoples Conference). It was further mentioned that he had written an article on February 14, 1975 alleging that the grouping of villages in Mizoram was responsible for the shortage of food. No more details of his activities, political or otherwise, from February 1975 to the time of his detention in June 1976 were given. He remained under detention in March 22, 1977.
- (iii) Shri Hrangha son of Shri Lianpuka, was detained under the orders of Lt. Governor, Mizoram dated December 31, 1975. Grounds of detention show that on the basis of a complaint dated August 24, 1974 from the Deputy Director, Supply and Transport, Mizoram, a case under section 407 I.P.C. was registered against Shri Hrangha for alleged misappropriation of Government rice. It was further mentioned that on September 16, 1975 Shri Hrangha had admitted before the trying Magistrate that he had disposed of certain quantities of rice in violation of the terms of his contract. He was detained under MISA on the basis of this case and remained under detention till March 23, 1977.
- (iv) Shri Ngurliana son of Shri Lalchhuna, a contractor, was detained on August 7, 1975.

The grounds of detention mentioned that he had drawn 500 quintals of Government rice from Mizoram Civil Supply Godown, Silchar, but deposited 369.22 quintals at Bairadi Rice Godown and misappropriated the balance. He was detained under MISA on the basis of this single case and remained under detention till March 25, 1977.

19.425 In accordance with the instructions issued from the Ministry of Home Affairs on October 10, 1975, a State level Committee of the following composition was constituted on December 3, 1975 for the review of detention cases:—

- | | |
|--|----------|
| (i) Chief Minister, Mizoram . . . | Chairman |
| (ii) Chief Secretary or in his absence
Secretary (Home) . . . | Member |
| (iii) Law Secretary . . . | Member |
| (iv) SP Special Branch (CID) . . . | Member |
| (v) Jt. Asstt. Director, SIB . . . | Member |

19.426 The Joint Assistant Director, SIB, was soon withdrawn from the Committee under the advice of the Home Ministry. This Committee held 10 meetings during the period from December 6, 1975 to November 16, 1976 for conducting the four-monthly reviews of the MISA detenus. Records show that the Committee could not function formally after November 16, 1976 mainly because of the pre-occupation of the Chief Minister with other matters and the reviews were conducted on the basis of examination of the cases in the Home Department. Proceedings of these meetings clearly indicate that the general policy of the Administration was not to consider any release and order the continued detention of all the detenus whenever their cases came up for review. Only one detenu named Shri H. Zalemthanga, a Store Keeper of Supply and Transport Department detained on August 20, 1975, was released as a result of review of his case by this committee on November 16, 1976. The Government of India through its instructions on October 10, 1975 had asked the State Governments and Union Territories to consider the release of such political detenus who regretted their past activities and were prepared to give assurance for their good behaviour in future. Files of Smt. Sanglianchhungi (MDF) and J. Kathianga (Peoples Conference) show that they had represented that their parties had nothing to do with the MIZO National Front and assured the Government of their good behaviour in future. Despite this their continued detention was confirmed at the time of every periodical review and they were released only after the Emergency was lifted.

19.427 Files show that instead of granting parole to the ailing detenus, arrangements for their treatment in some good Government Hospital in Assam used to be made. It is seen from a communication dated August 3, 1976 from Government of Mizoram to the Ministry of Home Affairs, Government of India, that none of the 51 detenus detained under the

emergency provisions till then had been granted any parole. It appears that the Government was not very favourably inclined to the grant of parole to detenus as should be evident from the following illustrations :—

- (i) Shri Vanei son of Lal Rema, a driver, detained on November 24, 1975 for alleged misappropriation of Government rice, sent a petition on June 2, 1976 for grant of parole on the ground of illness of his father aged 60 years undergoing treatment in a Hospital. During the intervening period, the detenu's cousin brother died on August 14, 1976 and his father died on September 24, 1976 as is evident from the relevant file. On the basis of a note dated September 25, 1976 sent from the Personal Assistant to the Chief Minister to the Secretary (Home), conveying the orders of the Chief Minister to release Shri Vanei, he was granted 3 days parole on September 28, 1976 to attend to the funeral rites of his father. His request for extension of parole was turned down on the basis of the recommendations of the SP CID Special Branch. The report from the Special Branch confirmed the death of the detenu's father and also mentioned that his cousin and not the real brother had died on August 14, 1976.
- (ii) Smt. K. Zodingliani, sister of Smt. Sanglianchhungi, President, Mizo Democratic Front, detained on May 9, 1976, sent an application on November 22, 1976 requesting for the release of her sister on the ground of her ill health. Smt. Sanglianchhungi also sent an application on December 18, 1976 requesting the Government to release her on parole as she needed special care in view of her illness. The Medical Officer had also endorsed on the application that though the detenu was being treated at Civil Hospital Aizawl, the progress was not satisfactory. The file does not show how these applications were processed but it is clear that she was not granted parole.
- (iii) Shri Lalianzuala Salo of the Peoples Conference Party was detained on June 2, 1976. His wife sent a petition on November 17, 1976 requesting for grant of parole to her husband who had undergone an operation at Gauhati Medical College and needed special care for quick recovery. File shows that she had sent a petition on August 27, 1976 also requesting for his release on the ground of illness of his sister who was 65 years old. Her request was turned down by the Chief Secretary who recorded the following note on November 18, 1976 :—

"Currently no cases are being considered for parole."

Mrs. Salo was informed on December 9, 1976 that Government regretted its inability to consider her request for the release of her husband.

- (iv) Smt. Biakmawii w/o Shri J. Kapthianga, a detenu of Peoples' Conference Party detained on June 3, 1976, sent a petition on October 5, 1976 requesting for release of her husband on the ground of her illness. The family doctor Shri R. Tlangkunga of Aizawl Civil Hospital had certified that she was having recurrent attacks of appendicitis and was to be operated upon. She had mentioned in her petition that there was no male adult member in the family except her husband. The Chief Secretary, Mizoram recorded on October 23, 1976 that "we have not given such temporary release in any case so far," and the petition was rejected by the Lt. Governor. Another application from the detenu dated December 8, 1976 on the same ground was also rejected. His wife submitted another petition to the Chief Minister on December 15, 1976 saying that she could not get herself operated unless her husband was released on parole. Lieutenant Governor recorded on the file that the Chief Minister has spoken to him regarding this case. He asked for the details like dates of operation, likely period of hospitalisation, and instructions from the Government of India in such cases. These details were collected. The Chief Secretary forwarded the file to the Lieutenant Governor with the following endorsement, "Mizoram Administration do not consider such release to anyone on parole in view of the prevailing situation". He further wrote that "if a departure is made in the instant case, it would be difficult to avoid similar requests from the large number of detenus also". The case was rejected by the Lieutenant Governor on January 12, 1977. The detenu sent another petition on January 18, 1977 requesting for parole to look after his ailing wife and take care of his youngest sister who was suffering from cancer. As per the certificate of the jail doctor, the detenu's health was also in bad condition. The Chief Secretary recorded on February 19, 1977 that "At this juncture such request cannot be accepted. In other cases also we have been unable to release detenus on such grounds. His own treatment will be arranged in the Hospital". The file was sent to the Lt. Governor who recorded that "CM spoke to me about the case of Shri J. Kapthianga. We may consider his request for a short parole after the election." Shri Kapthianga was released on March 22, 1977 after the emergency was lifted.
- (v) Shri V. Vulluia of the Peoples Conference detained on June 11, 1976, applied for parole on April 20, 1976 to enable him to take M.A. (Previous) Examination from Gauhati University. He was informed on August 6, 1976 that his request was rejected. He was then in Nallabari Jail in Assam. He sent a telegram on August 12, 1976 requesting for grant of parole so that he may take examination. Lieutenant Governor queried on the telegram

"Is this permissible and practicable?" It was examined by the Chief Secretary who wrote on the file that "It was not practicable to hold examination at Nallabari Jail nor was it desirable to give parole for this purpose." Shri Vulluia could not appear in the Examination.

(vi) Shri Ngursailova, a Constable of Special Branch of Police, was detained on November 26, 1975 for his alleged connections with the MNF. His wife sent a petition on February 11, 1977 requesting for the release of her husband on the ground that their youngest daughter had expired on January 8, 1977. The President, Village Council, Vaivakawn, Mr. P. V. Rosanga also wrote to the Chief Secretary on February 10, 1977 in this connection. The file shows that the detenu had sent a telegram from Jail requesting for grant of parole and it was received in the Home Department on January 11, 1977. The Home Department asked the Inspector General of Police on January 21, 1977 to verify the fact regarding the death of his daughter. No reply was received from the Inspector General of Police till March 10, 1977 when the third reminder was issued. The S.P. CID sent a report on March 10, 1977 saying that "On inquiry the statement of the detenu was found to be correct. The age of the child who died was 11 months. His wife and other children were living in normal life and parole was not recommended." Parole was not granted.

(vii) Smt. Lalmuthangi w/o Shri Rokhuma was detained on November 9, 1976 for alleged misappropriation of rice belonging to the Government. Her father a retired Subedar sent a petition on February 7, 1977 requesting for three days parole to her daughter with effect from February 10, 1977 to enable her to attend the wedding of her younger sister fixed for February 11, 1977. It was recorded on the file at the processing level that the State Government was competent to grant parole for periods not exceeding three months without any clearance from the Central Government. The Chief Secretary turned down the request on February 9, 1977 after recording that "We have so far given parole only in case of death of a very close relative. It may be difficult to grant parole for marriages etc."

(viii) Shri Lalpirthanga, a driver detained on August 20, 1975 for alleged misappropriation of rice belonging to the Government, applied for parole on June 1, 1976 on the ground of illness of his wife who had delivered her fourth child in May. The file shows that the Deputy Inspector General (Prisons) forwarded this application to the Home Department on September 20, 1976. The Home Department took more than one month and sent this petition to the SP CID for comments on October 29, 1976. SP CID replied on November 25, 1976 that the wife of the detenu and children

were then living with his elder brother and parole was not recommended. The application was accordingly rejected.

PONDICHERRY

19.428 The total number of persons detained under MISA, DISIR and other Preventive Laws was as follows :

MISA	54
DISIR	63
COFEPOSA	6

19.429 The total number of detentions ordered by invoking the provisions of Section 16A of the MISA was 54. Out of these, 2 persons were detained twice during the period of emergency and one remained absconing. Thus actually 51 persons were detained under MISA. The break-up is as follows :

Members and associates of political parties	37
Members and associates of banned organisations	2 (CPIML)
Economic offenders, criminals and Others	12

19.430 Amongst those detained on account of political activities, the largest number was of members and associates of the AIADMK (15). Only two persons belonging to CPIML were detained and no member of RSS, JEI or Anand Marg was detained under MISA.

19.431 Out of the 51 persons detained under MISA, the State Government did not confirm the declarations issued under Section 16A(3) in respect of 22. The remaining 29 persons were also not kept in detention for long and all the detenus were released before they completed 6 months in detention, as will be revealed from the following break-up :—

(i) Persons detained for less than one month	24
(ii) Persons detained for a period between one and 2 months	12
(iii) Persons detained for a period between 2 and 3 months	4
(iv) Persons detained for a period between 4 and 5 months	7
(v) Persons detained for a period between 5 and 6 months	4

19.432 Orders of detention, at the District level were passed by Additional District Magistrate, Pondicherry, who had been delegated the powers to pass orders under the MISA. At the Government level, a Screening Committee comprising the Chief Secretary, Law Secretary and District Magistrate Pondicherry, was constituted. All cases of detentions under

MISA received from the Additional District Magistrate were screened by this screening Committee before being submitted to the Lieutenant Governor for confirmation of the detention orders. The Screening Committee recommended revocation of orders regarding detention of ordinary criminals on the basis of instructions of Government of India advising against the use of MISA in such cases. Apologies tendered by detenus also received favourable consideration in many cases. In most cases the Lieutenant Governor accepted the recommendations of the Screening Committee. However, in the case of K.P. Lakshmanan, an authorised dealer in rice and paddy detained on July 2, 1975, on the ground that in September 1974, on being given N.O.C. for importing 120 tonnes of rice to Pondicherry he did not import the full quota and disposed of some rice outside Pondicherry, the Screening Committee recommended his release on August 1, 1975 but the Governor ordered continuation of his detention stating that he had committed a gross offence. He also ordered further secret inquiries to be made regarding his conduct. Police report was called for which revealed that detenu was not involved in any criminal case previously. The Screening Committee again recommended his release on September 29, 1975 which was accepted by the Lieutenant Governor.

19.433 S/Shri T. K. Arumugam and M. Arumugam were detained under MISA on October 17, 1975 under the orders of the Additional District Magistrate Pondicherry. The grounds of detention mentioned that they were running a confectionery manufacturing unit and were using a non-edible poisonous compound in the manufacture of confectioneries. The Screening Committee mentioned that in accordance with the instructions of Government of India, such detentions will not be proper within the existing frame-work of MISA and their detentions were not confirmed.

19.434 Keshvan Gounder, and 9 others, all workers in the 3 textile mills in Pondicherry, were detained by the Additional District Magistrate on November 27, 1975 and November 28, 1975 on the ground that they were associated with the trade union in the textile mills and had protested against the bonus ordinance of the Government. They also incited the workers to agitate against the Government and indulged in anti-government propaganda amongst the workers. The State Government files reveal that the Lieutenant Governor discussed their cases with the Collector, Law Secretary and the Inspector General of Police who reported that the situation in the mills was returning to normalcy. The detenus also submitted written apologies on December 9, 1975. Hence their detention orders were not confirmed by the State Government.

19.435 It was seen that many detenus, both political and non-political, tendered written apologies within 15 days of their detention, assuring that they would not indulge in any activity prejudicial to the security of the State, and the Screening Committee recommended revocation of their detention orders. Their detentions were accordingly not confirmed by the Lieutenant

Governor. (Cases of S/Shri S. Muthu and M.A. Shanmugam).

19.436 It was seen that grounds of detention were furnished to the Union Territory Administration by the Additional District Magistrate along with the copy of detention orders and declarations under Section 16A(3) issued by him. The copy of report received from the Police regarding the prejudicial activities of the detenu were also sent to the Administration. In the case of political persons, the grounds generally mentioned some past activities such as taking part in processions against the government prior to the declaration of emergency and further mentioned that after proclamation of emergency the detenu was seen going from place to place condemning emergency and inciting the people to rise against the Government. But in many cases, no specific incident with regard to the above activity was cited.

19.437 In a majority of cases pertaining to detenus associated with political parties the grounds of detention reveal that they had been indulging in anti-social activities like smuggling, creating industrial instability and labour unrest. S/Shri Radhakrishnan, ADMK, Moris Beson, ADMK, Murugan CPIM and 9 others said to be associated with different political parties were detained in April 1976. Grounds of their detention revealed that they were found criticising the emergency and the Prime Minister and also opposed the bonus policy of the Government and created unrest in the Industries. In the case of Shri Soundrarangan, Ex-DMK MLA, grounds of detention mentioned that he along with his gang of rowdies, created disturbance at the 'Fire Walking Festival' on May 19, 1975 and 3 cases of paddy smuggling were registered against his servants.

19.438 There were very few cases in which the grounds of detention revealed only political activity.

19.439 Three Government servants were detained under MISA—Shri M. Sivaraj, Head Clerk in Pondicherry Cooperative Milk Producers' Union, was detained on July 7, 1976 on the ground that he was promoting unrest among the workers and had also misappropriated huge amounts of this Society. Shri G.C.M. Balamohanam, LDC in the office of the Registrar, Cooperative Society and Shri M. Subramanian, Teacher in Government Primary School were detained on October 14, 1976 on account of association with CPIML.

19.440 No student or journalist was detained under the MISA.

19.441 Only 12 persons not connected with any political activity were detained under MISA on the grounds of being anti-socials and criminals. Out of these, 6 persons were detained on the ground of cheating by professing to double the currency. Grounds mentioned in most of their cases gave a detailed account of their cheating practices, but the offences mentioned against them pertained to the years 1973-74. No recent criminal offence was mentioned. Some persons were detained for indulging in rice and paddy smuggling.

19.442 The review of the detention cases was done by the Screening Committee but the question of statutory four-monthly review did not arise in respect of more than half of the detention cases as these cases were reviewed earlier and the detenus were released before 4 months. The cases of detenus were reviewed by the Screening Committee as and when representations were received from them against their detention. It was seen that most of the detenus made such representations shortly after their detention.

19.443 In reply to the Commission's questionnaire, the Administration has informed that in 7 cases parole was granted to the detenus and there was no case in which request for parole by a detenu was rejected by the Administration. The Administration has mentioned :

"On the recommendation of the Screening Committee, grant of parole was sanctioned to the detenus. In many cases, grant of parole was sanctioned to enable the detenus to look after sick family members and to enable them to perform special family functions etc."

M. Sivaraj (A Government servant) was granted parole for 7 days on account of the Dipawali Festival on an application by his wife. Since most of the detenus did not remain in detention for long, the requests for parole were naturally fewer.

19.444 Figures of arrests and detentions in various States and Union Territories during the period of emergency are tabulated in the Annexure attached to this Chapter.

ANNEXURE

TO CHAPTER XIX

Arrests and Detentions in various States/Union Territories during emergency

Sl. No.	Name of State/ Union Territory	Detentions under MISA	Arrests under DISIR
1	2	3	4
1.	Andhra Pradesh	1135	451
2.	Assam	533	2388

1	2	3	4
3.	Bihar	2360	7747
4.	Gujarat	1762	2643
5.	Haryana	200	1079
6.	Himachal Pradesh	34	654
7.	Jammu & Kashmir	466	311
8.	Karnataka	487	4015
9.	Kerala	790	7134
10.	Madhya Pradesh	5620	2521
11.	Maharashtra	5473	9799
12.	Manipur	231	228
13.	Meghalaya	39	20
14.	Nagaland	95	4
15.	Orissa	408	762
16.	Punjab	440	2423
17.	Rajasthan	542	1352
18.	Sikkim	4	—
19.	Tamil Nadu	1027	1644
20.	Tripura	77	99
21.	Uttar Pradesh	6956	24781
22.	West Bengal	4992	2547
23.	Andaman & Nicobar Islands	41	88
24.	Arunachal Pradesh	—	1
25.	Chandigarh	27	74
26.	Dadra & Nagar Haveli	—	3
27.	Delhi	1012	2851
28.	Goa, Daman & Diu	113	—
29.	Lakshadweep	—	—
30.	Mizoram	70	136
31.	Pondicherry	54	63
TOTAL		34988	75818

CHAPTER XX

Conditions in jails in India, with special reference to treatment of persons arrested under the DISIR or Detained under the MISA, etc.

20.1 In the Second Interim Report of the Commission (paragraph 15.23) it was indicated that the officers of the Commission would be visiting some of the jails in the country and a separate Chapter will be included in the report.

20.2 The first comprehensive study of the problems of Jails in India was made by the Indian Jails Committee in 1919-1920. Keeping reformation and rehabilitation of offenders as the ultimate objectives of imprisonment, the Committee identified the problems besetting the Jails and had suggested certain jail reforms. After Independence, the subject was again examined in 1952 at the national level by Dr. Walter C. Reckless, who came to India under the United Nations Technical Assistance Programme. Several Committees were appointed by different State Governments after Independence to examine the problem of jail reforms. In 1959, a model Prison Manual was formulated on the basis of the recommendations of the All India Jail Manual Committee appointed by the Government of India in 1957. The observations in regard to the conditions in jails made in the report of the Working Group on Prisons 1972-73 appointed by the Government of India, Ministry of Home Affairs, continue to be relevant even today. The Working Group observed as follows :—

"The prison administration in the country is generally in a depressive stage. Most of the prisons are heavily overcrowded. Convicts and under-trials are lodged in the same institution throughout the country. Adults, adolescents, juveniles, women and lunatics are also generally confined in the common institution and there is a serious lack of separate institutions for these various categories of prisoners. . . . There is a little coordination between the prison and correctional services and many more persons are sent to prisons than need to even under the laws in force in the country, it is obvious that the entire system calls for a thorough overhaul and many pronged reforms."

20.3 On January 1, 1975, the total population in the Indian jails was 2,20,146 as against a total capacity of 1,83,369. Out of these 2,20,146, the number of under-trial prisoners was 1,26,772. In many prisons juveniles are housed along with adults and there are no facilities in the jail hospitals for specialised treatment of prisoners. The study undertaken by the Working Group on Prisons in 1972-73 revealed that the States in which the daily

average population in 1970 was more than the capacity were Andhra Pradesh (15,361 as against 9,097), Assam (6,583 as against 4,846), Bihar (36,937 as against 19,334), Madhya Pradesh (13,673 as against 10,402), Maharashtra (18,186 as against 15,901), Nagaland (850 as against 260), Orissa (6,740 as against 5,716), Uttar Pradesh (36,918 as against 34,879) and West Bengal (22,309 as against 20,119).

20.4 A number of prison buildings are 75 to 100 years old. They are ill-equipped, ill-furnished and without proper ventilation or sanitation and with insufficient water supply arrangements. The architecture of the existing buildings caters mainly to the custodian requirements with no proper facilities for classification, individualised care, education, recreation, training or reformatory treatment. All types of casual and habitual offenders are generally lodged in the same institution with very little scope for diversifying the institutional approach in terms of maximum, medium and minimum security. The prison structure provides little scope for specialisation in dealing with under-trial prisoners, juvenile delinquents, young offenders, women prisoners, mentally sick and diseased prisoners. There is no separate arrangement for custody of persons detained under the Preventive Detention Legislation.

20.5 The declaration of emergency aggravated a situation, which was already bad, in terms of capacity for accommodation and the infrastructure for looking after the prisoners/detenus. At no time since Independence was such a large scale detention of senior and respected leaders ordered simultaneously all over the country and no notice whatever was given to the authorities concerned for being prepared to receive the large influx of respected leaders as detenus. Except in a very few cases, no separate arrangements by way of houses/guest-houses were set apart for accommodating detenus. A large number of those who were detained, were fairly advanced in age and many of them were in need of constant and specialised medical attention for which the jail hospitals were totally ill-equipped. In fact, except in the matter of food, some extra clothing and reading material, the detenus under the Maintenance of Internal Security Act were lodged in no better condition than the other inmates in the jails, completely oblivious of the concept that preventive detention is not punitive detention and the detenus are not to be treated like convicts. The Commission urges the Government of India

to take special and effective steps urgently to look into the conditions in the jails in an effort to treat the inmates in a manner which is compatible with the modern concept on the reformatory aspects of imprisonment.

20.6 The subject of prisons and the allied institutions is a State subject. It appears to have remained excluded from the developmental plans of the country until recently. Paucity of funds has been in no small measure responsible for the unsatisfactory conditions in the jails and has hindered the progress of jail reforms. The Commission understands that in a paper recently submitted by the National Institute of Social Defence for consideration of the Finance Commission, the total financial requirement for various aspects of prison development has been estimated to be Rs. 190 crores. The Commission hopes that the Central and the State Governments will take adequate steps in this regard.

20.7 The Commission sent out a questionnaire to all the States requesting information on certain relevant topics. The following States and Union Territories supplied the information :—

- (1) Andhra Pradesh.
- (2) Gujarat.
- (3) Haryana.
- (4) Himachal Pradesh.
- (5) Karnataka.
- (6) Kerala.
- (7) Madhya Pradesh.
- (8) Maharashtra.
- (9) Manipur.
- (10) Meghalaya.
- (11) Nagaland.
- (12) Orissa.
- (13) Punjab.
- (14) Rajasthan.
- (15) Sikkim.
- (16) Tamil Nadu.
- (17) Tripura.
- (18) Uttar Pradesh.
- (19) West Bengal.
- (20) Arunachal Pradesh.
- (21) Andaman & Nicobar Islands.
- (22) Chandigarh.
- (23) Dadra & Nagar Haveli.
- (24) Delhi.
- (25) Goa, Daman & Diu.
- (26) Lakshadweep.
- (27) Mizoram.
- (28) Pondicherry.

20.8 The notes given hereafter in regard to the conditions of the jails in the different States are on the basis of the answers received from the

different State Governments to the questionnaire. In addition, the information contained in the notes is also based on observations made by the Commission's officials, who visited jails in different parts of the country in an effort to make an on-the-spot study of the jail conditions. Effort has been made to keep the reports on the jail conditions as factual as possible and shorn of any comments whatever except recording a few suggestions for the consideration of the Government. The exercise has been undertaken entirely with a view to focusing the attention of the Government at the Centre and in the States on the crying need for improving the prevailing conditions in the jails; and not by way of criticism of any particular jail administration or the State, or the conduct of any person—named or unnamed.

ANDHRA PRADESH

20.9 The authorised accommodation in all the jails of Andhra Pradesh as on June 25, 1975, was 5,912, including Open Air Jails, while the actual population on that day was 5,885. Therefore, there was hardly any space for the detenus, who were taken into custody during the emergency.

20.10 The total number of arrests under MISA, DISIR, etc. during the emergency was as follows :—

MISA	.. 1,135
DISIR	... 451
COFEPOSA	.. 45
	1,631

20.11 Additional accommodation was provided for the detenus by converting portions of certain jail building into wards. Facilities like fans, lavatories, bath-rooms, etc. were provided for the comfort of the detenus. The detenus were generally kept separate from other prisoners. However, some of those categorised as 'C' Class detenus (who were mostly economic offenders. etc.) were kept along with ordinary prisoners.

20.12 Initially all MISA detenus were classified under a 'Special Class'. They were subsequently divided into three classes. Class 'A': Members of Parliament or State Legislatures or prominent political leaders, who were not detained on account of economic offences. Class 'B': detenus not detained for the commission of economic offences but not coming under the above category. Class 'C': All other detenus and those detained for economic offences were treated in Class 'C'. Detenus under COFEPOSA and persons arrested under the DISIR were treated in Class 'C'.

20.13 No detenu was put in solitary confinement.

20.14 No detenu is reported to have died while under detention, or shortly after release from detention.

20.15 It is seen from some of the jail records that extra expenditure was incurred on account of medical facilities made available to the detenus and other prisoners. 213 detenus were hospitalised. The DIG of Police, Intelligence, complained that the detenus lodged in Central Prisons of Hyderabad, Warrangal, Rajahmundry and Visakhapatnam and District Jail at Secunderabad and Nellore were getting admitted to various hospitals on one pretext or the other and after being admitted to the hospital, were contacting their party workers.

20.16 In the case of MISA detenus, besides granting interviews with layers, interviews were also granted initially only to the members of the families of the detenus and that too in the event of serious illness of detenus. Subsequently, in the month of August 1975, this was relaxed and interviews were granted once a month to family members. Interviews were refused to 27 detenus for a period of six months, because of their alleged nexalite activities. This was subsequently extended by another six months. The jail authorities also imposed punishment by way of stoppage of interviews on 12 detenus for violation of prison discipline.

20.17 No newspapers or periodicals were supplied to the detenus at Government cost. However, detenus were allowed to purchase newspapers and periodicals as approved from time to time from their own resources. Facilities for recreation and cultural activities were provided at Government cost.

ASSAM

20.18 In the absence of replies to the questionnaire sent by the Commission, this note is based on the observations of the officers of the Commission, who had visited some of the jails in Assam and had also collected certain statistics from the files of the State Government.

20.19 As against authorised accommodation for 4930 prisoners in the jails in Assam, the number of prisoners in that State as on June 25, 1975, was 7909. The number of persons detained/arrested during the Emergency was as under :—

MISA	..	558
DISIR	..	1,933
COFEPOSA	..	53

To accommodate these additional inmates workshops for vocational training in the jails had to be converted as residential premises for the detenus. Besides barracks specifically meant for recreational and educational purposes also had to be closed for providing accommodation to detenus. Thus, the problem of overcrowding was aggravated by the

influx of persons detained/arrested during the Emergency. The then Chief Secretary, Assam, had occasion to observe that overcrowding was the biggest problem faced by the jails and that there was no prospect of improvement in the situation because the disposal of cases of under-trial prisoners, who constituted the bulk of the jail population, had shown no appreciable improvement. The jails most affected by this problem of overcrowding were the district jails at Gauhati, Dibrugarh, Dhubri and Goalpara.

20.20 Regarding problems of water supply and sanitation, the IG (Prisons) has observed :

“Besides the problem of overcrowding in the Jail, there was the problem of inadequate water supply also. Due to the increased population in the jails, particularly during the hot season, water had become rather scarce.”

In order to meet this problem, additional pumps had to be installed. Besides, water was procured with the help of the water tankers of the concerned Municipalities.

20.21 Regarding sanitation and conservancy, the IG of Prisons has observed :

“The problem of sanitation, particularly the latrines, were my constant headache. The latrines in the Jails of Assam as such were not adequate enough to cope up with the needs of such large number of prisoners. Due to the sudden influx of the detenus during the period of emergency, the existing latrines were found to be highly inadequate. Naturally, the hygiene and sanitary conditions in jails deteriorated to some extent.

20.22 The Inspector General by a special order prohibited the use of handcuffs on prisoners excepting those who were violent. Specialised medical facilities were made available on the advice of doctors and many detenus were sent to Gauhati Medical College hospital. 292 persons detained under the emergency laws required special medical treatment or hospitalisation. It was made available to them. The expenditure on jail hospitals increased from Rs. 4.55 lakhs in 1974-75 to Rs. 7.65 lakhs in 1976-77. The IG (Prisons) also authorised the Jail Superintendents to purchase locally, medicines not available in Government Hospitals.

20.23 Diet as prescribed in the Assam Detention Order was given to MISA detenus and diet as prescribed in the Assam Jail Manual to COFEPOSA detenus and DISIR prisoners. All political prisoners were allowed to arrange and supervise their own cooking. According to the IG (Prisons), no detenu died while in detention in any of the Jails of Assam. Two persons arrested under DISIR died in custody during the period of the emergency. Administrative inquiry came to the conclusion that there was no foul play in the case of death of one

Shri Robin Kalita, a CPM leader. However, the inquiry report of Shri S. M. L. Bhatnagar, at present Chief Secretary, Assam, shows that the term of the Jail Visitors Committee for Gauhati Jail had expired, but it had not been reconstituted for a very long time. The Commissioner for Inquiries expressed surprise that the Deputy Commissioner, and in his absence, the ADC did not make frequent visits to the local jails. The Commissioner suggested that the Deputy Commissioner should visit the jail frequently, listen to the complaints of the inmates and try to solve their problems. Inquiry in respect of death of another prisoner also showed that his death was due to natural causes.

20.24 Interviews with MISA detenus and DISIR prisoners were granted at reasonable intervals, under the orders of the local Deputy Commissioner in the presence of Intelligence officials. However, the IG (Prisons) had ordered that if Intelligence officials were not available, interviews could take place in the presence of a jail official. Detenus were provided with periodicals and daily newspapers. Recreational and sports facilities, like volleyball, badminton, chess, etc., were also provided. Occasionally, cinema shows from the Publicity Department of the Government of Assam were also arranged inside the Jail. Applications from detenus for appearing at examinations were forwarded to the Political Department of the Government for necessary action. Student detenus, who were intending to take their examinations, were provided with attendants, tables, chairs, lights, fans, etc.

BIHAR

20.25 In the absence of replies to the questionnaire sent by the Commission, this note is based on the observations of the officers of the Commission and the statistics collected from Government files.

20.26 The authorised accommodation in the various jails in Bihar is for 21,140 prisoners. The maximum number of inmates in these jails on any date during the emergency was 38,407 on September 1, 1975. Because of over-crowding in the jails in Bihar, numerous complaints relating to poor sanitary and conservancy conditions etc., were received from the prisoners. On October 4, 1976, political prisoners lodged in Hazari Bagh Jail filed a petition before the Superintendent of Jail pressing for redressal of their grievances. Subsequently, they went on hunger strike also. Another petition was filed by them on November 24, 1976 with a threat that if the demands were not conceded by November 26, 1976, they would embark upon a fresh agitational programme. To dramatise their protest against the jail administration, two criminals arrested under the MISA jumped into a well. Political prisoners also joined other prisoners in shouting slogans against the authorities. In the resultant confusion an alarm was sounded and it is alleged that political prisoners were indiscriminately beaten up by the jail staff and convict overseers. One Shri Sayyid Mohammad Habcebullah, aged about 80 years, sustained injuries in this

incident and he died of heart failure in Ranchi Medical Hospital on January 12, 1977. The Commissioner, North Chhota Nagpur Division, who looked into this matter, reported to the Government that the prescribed food ration was not being given to MISA prisoners in the Central Jail at Hazari Bagh. He further reported that proper accounts relating to food rations were also not being maintained. There was also no proper account of medicines. Interviews were not being granted to the relations of the detenus in the prescribed manner. A prisoner, who wanted to take an examination, was not provided with the normal facilities. For some time political prisoners had been lodged with ordinary criminals. The Commissioner also brought to the notice of the Government that the IG (Prisons), who was supposed to visit jails twice a year, was not inspecting the jails regularly and even if he visited a jail, there was no proper compliance with his instructions/remarks. Rules 43 and 47 of the Jail Manual laid down that there should be monthly visits by the Deputy Commissioner and the Executive Engineer PWD but this was not carried out. In the Central Jail at Hazari Bagh, a group of 3 prisoners was being kept in a cell 10 ft. x 6 ft. There was a urinal inside the cell, which remained closed from 6 p.m. to 6 a.m.

20.27 The MISA detenus were not given adequate clothing and they were not allowed to meet each other although this was permitted under rule 9 of the Bihar Security Prisoners Order, 1972.

20.28 Relatives of Class A and Class B prisoners were granted interviews once a week. The interview was to be held in the presence of officers deputed by DIG/CID (Special Branch), Bihar. The interview could last for half an hour only. In Hazari Bagh, the Deputy Commissioner passed an order to the effect that security prisoners should obtain sanction from him for the grant of interview though the Bihar Security Prisoners Order, 1972, did not contain any provision prescribing sanction from the Deputy Commissioner or the District Magistrate for grant of interviews.

GUJARAT

20.29 The authorised capacity in all the jails of the State was 4972 as on June 25, 1975, but the actual population on that day was 3636. The number of persons taken into custody under MISA, DISIR, COFEPOSA, etc. is as given below :—

1. MISA	1762
	(including 91 Pak Nationals)
2. COFEPOSA	279
3. DISIR	2643

The detenus were kept in separate wards away from the convicts and under-trial prisoners. Some alleged smugglers detained under COFEPOSA, however, were transferred to Rajasthan, Punjab and Tamil Nadu jails in accordance with the

instructions received from the Central Government. The detaining authorities were authorised to classify the prisoners according to their discretion. However, in April-1976, the Government issued certain guidelines treating Members of Parliament, Members of Legislative Assembly, Mayor, Deputy Mayor, Chairman of Committees of Corporations/President and Vice-President/Chairman of Committee of District and Taluka Panchayats being treated as Class I prisoners. As a result of the petition filed by some of the detenus, the Government gave an assurance to the High Court to examine the case of each detenu separately and further clarified on October 26, 1976 that engineers, doctors, lawyers and persons paying income-tax over a period of 10 years of not less than Rs. 5,000 a year, who had been detained for political activities and Presidents of the Municipalities, would be given Class I status. Businessmen paying income-tax of not less than Rs. 5,000 a year were also given Class I status. No person was put in solitary confinement. However, the accused persons in the Baroda Dynamite case were kept in separate cells under the orders of the court. The court later ordered that since they were under-trial prisoners, they would be kept along with other under-trial prisoners. However, the accused themselves requested that they be kept in separate cells and this request was acceded to. All the prisoners were detained subsequently under the MISA and thereafter they were shifted from separate cells and kept together in the barracks in the hospital yard. 699 detenus received special medical treatment during their period of detention. Eight MISA detenus died either during the period of detention or within one month from the date of their release on parole. Of these, three, died while in custody and magisterial inquiry was ordered in these cases. Two COFEPOSA detenus expired during the period of detention. 1122 detenus were given special diet for reasons of health, etc. MISA detenus were supplied newspapers on the approved list and given facilities of recreation as per Gujarat Conditions of Detention Order, 1971. Conditions of the prison barracks and sanitary block were not found to be satisfactory. Medical facilities available in most of the Central Prisons like Ahmedabad, Baroda and Surat prisons are reported to be satisfactory. Those desirous of getting Ayurvedic treatment, etc. were provided the requisite facilities. None of the detenus was put in solitary confinement or kept in fetters in the jail. However, some Class II detenus were awarded solitary confinement as prescribed by the Manual for acts of misbehaviour, etc. On April 20, 1976, there was an incident of assault on the jail staff by the MISA Class II detenus, who were not willing to be locked up during the night in jail. They demanded the same facilities as Class I detenus who were not locked during the night. There was a scuffle between the jail staff and the detenus resulting in a mild lathi charge. In this incident five jail guards and 14 detenus sustained minor injuries. The State Government has recently set up a Jail Reforms Committee under the Chairmanship of Shri Babubhai Vasanwala, MLA.

HARYANA

20.30 Accommodation for 2794 prisoners was available in the Haryana jails on June 25, 1975, whereas the jail population on that day was 3003. During the Emergency, the number of prisoners taken into custody and kept in different prisons from time to time was as under :—

(1) MISA	200
(2) COFEPOSA	2
(3) DISIR	1079
(4) EC Act-cum-DISIR	99
(5) EC Act	869
(6) 151 Cr. PC	592

20.31 The chart below indicates the authorised accommodation in different jails of Haryana and the maximum number of detenus/prisoners lodged therein during the year 1975-76 :

Name of the District	Authorised Accommodation	Maximum Date	Strength Fig.
Ambala	986	30-8-1976	1098
Hissar	700	28-8-1975	870
Rohtak	350	31-1-1976	699
Gurgaon	119	18-11-1976	294
Karnal	180	7-8-1975	456
Kaithal	24	5-8-1975	97
Mohindergarh	50	19-8-1975	50

20.32 Several MISA detenus from Delhi were also sent to Haryana from time to time and lodged in different jails of the State. In Hissar, Rohtak, Gurgaon, Karnal and Kaithal there was considerable overcrowding as would be evident from the figures. The MISA and COFEPOSA detenus were kept separately. Separate arrangements were made outside the jail for Shri Morarji Desai and Shri Jayaprakash Narayan. MISA and COFEPOSA detenus were treated as a separate class as mentioned in Haryana Detenus (Conditions of Detention) Order, 1971 and Haryana Detenus (Conditions as to Maintenance, Discipline and Punishment for breach of Discipline) Order, 1974. Shri Jyotirmoy Basu and Shri Raj Narain were kept in solitary confinement in District Jail, Hissar. A number of other persons including Shri K. R. Malkani, Shri Hari Ram, Shri Ram Lal were kept in solitary cells for different periods. While two of the detenus were kept in solitary confinement for the purpose of interrogation, some others were kept in such confinement for violation of prison discipline. One Shri Parminder Kumar Bhardwaj, a suspected Naxalite, was also kept in solitary confinement for some time.

20.33 350 persons were provided specialised medical treatment or hospitalization during the period of the Emergency. Three persons died while under detention. Shri Khem Paul, who was arrested in a dacoity case and vasectomised on November 17, 1975, died on November 30, 1975—13 days after the vasectomy operation, as a result of post-operative complications. In Haryana 55 persons were sterilised during the period of their detention. It is seen from the report of the State Government that in a number of cases where Chief Medical Officer or the Jail Medical Officer had recommended specialised treatment in hospital, such treatment was denied by the Administration on one ground or the other. In this regard, the following cases are illustrative :

- (a) Shri Mani Ram Bagri was recommended transfer to Medical College Hospital, Rohtak on September 21, 1976. The District Magistrate, Ambala was asked on September 30, 1976 to keep a watch on the health of the detenu and to inform the Government as and when it caused concern. On the latest medical report dated October 20, 1976, the condition of the detenu was described as satisfactory and hence he was not transferred.
- (b) The Surgical Specialist, Civil Hospital, Ambala, had advised that Shri Hiranand Arya be shifted to the Medical College Hospital, Rohtak, for consultation. On this, the opinion of the then Superintendent, Medical College Hospital, Rohtak, was sought ; but it was not available till the release of the detenu on February 1, 1977.
- (c) In the case of Mr. V. P. Saini, the Medical Officer, Central Jail, Ambala, in his report dated May 14, 1976, advised the transfer of the detenu either to PGI, Chandigarh or to some hospital in Delhi for treatment. The matter remained under correspondence with different authorities until the detenu was transferred to District Jail, Rohtak, for treatment on January 13, 1977.
- (d) In the case of Shri Devi Lal, the Superintendent, Sub-Jail, Mohindergarh through his wireless message dated November 9, 1976 sought the permission of Government to transfer Shri Devi Lal from Mohindergarh to Medical College Hospital, Rohtak. The proposal was turned down by the Chief Minister who suggested that a skin specialist should visit him. In the meantime, the patient's condition deteriorated. Shri Devi Lal resorted to hunger strike for 48 hours from December 21, 1976 to protest against the criminal neglect of his health. The CID reported on December 29, 1976 that Shri Devi Lal was admitted to the Civil Hospital, Narnaul and that there was no improvement in his condition. Even then the Chief Minister

ordered on January 4, 1977 that for the present he should remain in Mohindergarh.

20.34 Shri K. L. Juneja, Superintendent, Central Jail, Ambala, was placed under suspension for recommending that Shri Hardwari Lal should be sent for better treatment either to PGI Chandigarh or to Medical College, Rohtak. The State Government initiated departmental action against him on the ground that though facilities for consulting the specialist were available in civil hospital, Ambala, Shri Juneja gave an untrue report about the condition of the detenu and he insisted on his transfer from district jail, Ambala. During inquiry by the Commission's officials, it was revealed that the Medical Specialist of Civil Hospital, Ambala, suggested that Hardwari Lal, who was suffering from Myocardiac Infarction, should be shifted to PGI Chandigarh or Medical College, Rohtak for constant medical supervision. The Director of Health Services, Haryana, however, opined that there was no such symptom of any coronary distress and Shri Hardwari Lal could be safely treated in the civil hospital at Ambala. In this case, Shri S. K. Puri, the then IG—Prisons, at present Additional Inspector General of Prisons, Haryana, Chandigarh, has stated that "The case regarding treatment of Shri Hardwari Lal was discussed in the office of the Chief Secretary and Secretary for Jails when the Deputy Secretary was also present. Shri R. C. Mehtani was sent for, who after consulting the Chief Minister, informed the Chief Secretary that there was nothing serious with Shri Hardwari Lal requiring immediate attention."

20.35 Interviews were initially granted once a month. This condition was relaxed on July 8, 1975. Thereafter, interviews were allowed not more than once a week. These were not to exceed two hours and were to be held in the presence of an officer of the State Government or Central Government. CID officials used to be present during interviews occasionally. CID officials used to censor incoming and outgoing letters and collect information about the activities of the detenus, etc. On November 25, 1975, however, interviews were restricted to once a fortnight. About 170 requests for interviews were rejected by the District Magistrate, Ambala, and in a very large number of cases interviews were disallowed on various grounds. There were allegations that sometimes the interviews were delayed intentionally by the jail authorities and visitors had to wait for a very long time. One Shri Tek Chand, ex-MLA, while confined in District Jail, Karnal, filed nomination papers for contesting the Rajya Sabha elections against Shri Bansilal. His applications were duly forwarded by the jail authorities to the Government, but the Government did not communicate any decision in the matter. The Haryana Detenus (Conditions of Detention) Order, 1971 provided that student detenus should be allowed to take examinations. However, it was revealed during the Commission's hearings that with a view to preventing one Shri Pitamber Lal Goyal from appearing in a competitive examination, the rule in this regard was modified. The amended rule prohibited detenus from taking any academic or competitive examination. This resulted in hardship to all student detenus.

20.36 Newspapers and periodicals were supplied as per the rules. However, detenus were denied access to certain books. Authorities of District Jail, Hissar seized some books belonging to Shri George Fernandes and these were returned to him only after his release. These included books like "The Bitter Harvest", "Inflation and India's Economic Crisis", "Of Cabbages and Kings" and "For Reasons of State".

20.37 There was a provision in the Haryana Detenus (Conditions of Detention) Order 1971 for grant of family maintenance allowance ranging from Rs. 50 to Rs. 100. It is seen from the records that 25 detenus submitted petitions for grant of family maintenance allowance, duly recommended by the District Magistrate. All these petitions were rejected by the State Government.

20.38 A special feature of the jail administration during the period of the Emergency in Haryana was that on many important issues like arrival and transfer of detenus, interviews with the detenus, etc., the District Magistrate became the main channel of communication of the instructions of Government to the Superintendents of the Jails and the position and authority of the IG (Prisons) was whittled down. Shri S. K. Puri, the then IG (Prisons) has confirmed that in most of the cases he had no earlier intimation regarding the arrival of the detenus and that in clear violation of the established procedures and channels of communication, the District Magistrates were issuing orders directly to the Jail Superintendents. Similarly, the decision to keep a particular individual at a particular place was taken at the level of the Government without consulting the IG (Prisons). A large number of detenus from other States were kept in Haryana without prior consultation with the IG (Prisons).

HIMACHAL PRADESH

20.39 The authorised accommodation in all the jails together in the State was for 561 prisoners, whereas the jail population as on June 25, 1975, was 264.

20.40 During the emergency, the number of persons arrested/detained is as under :—

MISA	...	34
DISIR	...	251
Various economic offences	...	403
Total :		<u>688</u>
Persons arrested u/s 151 of the Cr. PC and other Preventive Laws	...	62

20.41 However, some of the persons arrested under DISIR and other Laws were released on bail from time to time.

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20.42 On the whole, the jails in Himachal Pradesh were not overcrowded during the emergency.

20.43 The persons arrested under different Laws and Rules relating to emergency were kept in separate wards. Some of the prisoners detained during emergency were sent outside the State. The MISA detenus were classified into the classes, viz., special class and ordinary class. Other prisoners, including DISIR prisoners, were classified into two classes, viz., 'B' Class and 'C' Class. Member of Parliament, Members of Legislative Assemblies, etc., were kept in special class and other detenus in ordinary class.

20.44 The detenus were granted interviews as per conditions in the detention orders. Initially, they were liberal but under the guidelines issued by the Government of India, certain restrictions were imposed on interviews. Detenus and other prisoners were given basic facilities and special diet as applicable from time to time under the Rules.

20.45 Requests for supply of newspapers and recreational facilities were also granted.

20.46 Shri Vidya Sagar Joshi, a detenu, died due to heart attack on August 12, 1976. On a Magisterial inquiry, it was found that the death was due to natural causes following a massive heart attack.

KARNATAKA

20.47 On the day the Emergency was declared the prison population in Karnataka jails was 5,217 as against authorised accommodation for 7,311. During the emergency the total number of persons kept in jail following their arrest/detention is as under :—

MISA	...	487
COFEPOSA	...	119
DISIR	...	4,015
Cr. P. C.	...	1,232
Karnataka Police Act	...	1,562

20.48 This resulted in overcrowding in some of the jails. The State Government, however, did not establish any place of detention outside normal prisons in spite of the overcrowding. For instance, in the Central Prison, Bangalore, as against the authorised accommodation for 750 the jail population was fluctuating between 1,000 and 1,600 during the emergency. MISA and COFEPOSA detenus were segregated while DISIR prisoners were kept with the undertrial prisoners.

20.49 According to the Inspector General of Prisons, the sanitary conditions in all the jails were more or less satisfactory.

20.50 Security prisoners under the MISA were broadly divided into two Classes—A and B. COFEPOSA detenus were treated as a separate class.

DISIR undertrials and convicts were treated as ordinary prisoners. However, as has been noted during the Commission's hearing of Snehalatha Reddy's case, the conditions for female prisoners were not quite satisfactory. No person was detained in solitary confinement during this period, though one MISA detenu was kept separately for observation of his mental condition.

20.51 It has been reported by the State Government that adequate medical facilities were given to MISA detenus and that specialist medical services were also made available as and when needed. The State Government had issued instructions that in case the condition of any detenu deteriorated and the detenu was in urgent need of specialist medical treatment for any serious illness, he should be shifted to a convenient hospital for the required specialist treatment. However, as has been noted in the case of Lawrence Fernandes, due either to indifference or to negligence, the required medical facilities like X-ray etc. were not made available to him in time in spite of the advice of the specialist.

20.52 Syed Abdul Salam, one of the detenus, died during detention due to heart failure. A magisterial inquiry regarding his death has been ordered.

20.53 Smt. Snehalatha Reddy, a chronic patient of asthma, who was arrested on May 2, 1976 and detained under the MISA on May 22, 1976, was kept in Bangalore jail. In the diary maintained by her, she has not only mentioned about ill-treatment and harassment meted out to her by the jail authorities but also about lack of proper medical care and attention with the result that she had to take injections herself. The advice of the medical officer, Central Jail, Bangalore, that she be admitted to a hospital for investigation and treatment was ignored. Her condition deteriorated during the period of her detention. She was released on parole on December 13, 1976 and she died shortly thereafter, on January 20, 1977.

20.54 Jaswant Rai Parekh, a COFEPOSA detenu died during detention in the District Prison at Bangalore. He had symptoms of hysteria, hypertension, etc. He was shifted to the District Hospital, Mangalore, and subsequently to Father Muller Hospital at the same place, where he died.

20.55 Newspapers, magazines, periodicals, etc. were supplied to the MISA detenus as per the existing scale. Recreational facilities were also provided at Government cost. It is reported that there was no instance of handcuffing of or putting of leg-shackles on the detenus. However, in the case of detenu Jai Gurudev who came from Uttar Pradesh, he was received in fetters from Uttar Pradesh as per the orders of the Government of the State.

20.56 Interviews were granted as per rules and the instructions issued by Government of India from time to time. Stoppage of interviews had also been resorted to as a measure of prison discipline. The Superintendents were empowered to grant interviews on the basis of eligibility. It is seen that a large

number of prisoners was transferred from one jail to another and according to the Inspector General of Prisons this was not done as a punitive measure.

20.57 There was a serious case of rioting in Central Jail, Bellary on January 29, 1976, which started with an exchange of words between DIR prisoners and a canteen clerk. Thereafter there was a scuffle between DIR prisoners and the jail staff. This escalated into a serious confrontation between the jail staff and the prisoners. Three detenus, one Superintendent, and three Assistant Superintendents were injured. The State Government got the matter enquired into by the Inspector General of Prisons and punishments were inflicted on the Superintendent, an Assistant Superintendent and the Head Warder.

KERALA

20.58 As against the authorised accommodation for 5,213 prisoners in the jails in Kerala, the actual jail population was 3,478 on the day the emergency was declared.

20.59 During the emergency, the number of persons detained/arrested was as under :

MISA	...	790
DISIR	...	6,894
COFEPOSA	...	96

20.60 MISA detenus were accommodated in the three Central jails and COFEPOSA detenus were kept in the Central Jail at Trivandrum. They were, however, segregated from convicts and undertrial prisoners. 16 juveniles charged with offences under the DISIR were detained in the Borstal School at Cannanore under Kerala Borstal School Act. There was overcrowding in Trivandrum and Trichur Central Jails as stated by the Superintendents of those jails. It was seen that in Trivandrum Central Jail the sanctioned accommodation in segregation blocks 'A' and 'B' was 72 and 36 respectively, whereas the average jail population in each of these blocks during the period of emergency was 81. During the lock-up hours, the detenus were required to use urinals attached to the cells. Trichur Central Jail has to depend on the Panchayat for supply of water for purposes of cooking, drinking and washing. Water supply is very inadequate between January and June every year. Sanitary facilities are also inadequate. In the absence of septic tanks in several blocks, the practice of manual removal of nightsoil has not yet been discontinued in this jail.

20.61 MISA detenus had been kept in one class without any distinction. Some of them, however, were provided with additional facilities in compliance with the Government orders. COFEPOSA detenus were kept as ordinary prisoners and the DISIR undertrials were provided with facilities admissible to undertrial prisoners.

20.62 Facilities for specialised treatment or hospitalisation were extended to 231 persons taken into custody under the emergency laws. One MISA detenu and one COFEPOSA detenu died during the period of detention while undergoing treatment in

hospitals outside the jail. The magisterial enquiry held in regard to the death of the MISA detenu gave the finding that the death was due to natural causes.

20.63 Apart from providing newspapers to the detenus, they were permitted to get such newspapers, periodicals and books from outside as were not considered objectionable. The detenus were also provided with facilities for sports and recreation and grants under this head had been suitably increased.

20.64 Superintendents of Jails were empowered to allow relatives or counsel to have interviews with the detenus. While the family members could interview the detenu for 15 minutes, the Advocates were allowed to be with the detenus for 30 minutes.

MADHYA PRADESH

20.65 As against the authorised accommodation for 12,388 prisoners in the jails in Madhya Pradesh, the jail population was 16,166 on June 25, 1975. The number of persons detained/taken into custody under different laws during the emergency was as under :

MISA	5,620 (excluding 74 absconders)
COFEPOSA	11
DISIR	2,521
Preventive Laws (151 Cr. P.C.)	26,904

20.66 To accommodate this extraordinary influx of prisoners, some of the barracks earmarked for female and juvenile prisoners were converted into regular prison wards. The jails at Begum Ganj and Narsingarh were kept exclusively earmarked for the MISA detenus and a temporary jail was also set up at Pachmari.

20.67 Persons detained or arrested under emergency laws were kept in the same jails where under-trial prisoners and convicts had been lodged, but they were accommodated in separate wards. In some of the jails it was found that lunatics were locked up in female wards along with ordinary prisoners.

20.68 The Inspector General of Prisons has stated as follows :

"Almost every jail was over-populated. So the work sheds, prayer hall and other available accommodation in the jails were vacated to create accommodation for MISA detenus. Ordinary prisoners were shifted to segregated barracks where too much overcrowding occurred. As a result, the jail factories were wholly or partially closed. The sanitation requirements were also not adequate as the overcrowding occurred to the extent of 50 per cent to 100 per cent or even more in some of the jails."

20.69 MISA detenus were categorised as Class I and Class II prisoners and those arrested under other laws as Special and Ordinary Class prisoners. Under the instructions of the State Government, the District Magistrate categorised Members of Parliament, Members of Legislative Assembly and other impor-

tant political leaders as Class I prisoners. The other detenus were treated as Class II prisoners. COFEPOSA detenus were treated as ordinary prisoners. A large number of MISA detenus filed petitions in the High Courts for writs against their categorisation as Class II prisoners as they resented the extra facilities made available to the detenus of the higher class.

20.70 The punishment of solitary confinement was awarded to 87 detenus for breach of discipline etc. 732 detenus were hospitalised during the period of their detention. Specialists used to be sent to the jail to attend to the patients. The detenus were also sent outside the State for specialised medical treatment.

20.71 13 persons died either during the period of their detention or within one month following their release. In 9 of these cases, magisterial inquiry was held and no negligence was found in 8 of them. In the 9th case, i.e. the case of Shri Hashmat Warsi, further inquiry is in progress.

20.72 24 MISA detenus were kept in fetters for a specified period on grounds of indiscipline, rioting etc. During a visit to Dewas jail, officers of the Commission found that all ordinary prisoners were kept in fetters on the ground that the Dewas Jail was an insecure jail. Riots involving MISA detenus and other prisoners occurred at the following jails during the emergency :—

Bhopal	November 27, 1975
Rewa	September 18, 1975
Chindwara	July 21, 1975
Raipur	January 1, 1976
Dhar	March 19, 1976

Enquiries relating to the incidents of rioting in Raipur, Rewa and Dhar jails have been conducted by the State authorities. Inquiries into other incidents are in progress.

20.73 District Magistrates were empowered to allow any five members of the family of the detenu to have an interview with him once a fortnight. Permission was also given to lawyers for consultation with the detenus. In the case of COFEPOSA detenus, however, interviews were granted once a month. 86 MISA detenus were denied the facility of interview for specified periods as a measure of punishment for breach of jail discipline.

MAHARASHTRA

20.74 As against an authorised accommodation for 14,801 prisoners in Maharashtra Jails, the jail population on June 25, 1975 stood at 19,786. During the emergency the number of persons detained/arrested under the various emergency laws was as under :—

MISA	... 5,473
COFEPOSA	... 490
DISIR	... 9,799

20.75 39 additional barracks were constructed in the various prisons in the State on a priority basis to cope with this problem of overcrowding. The

new prison at Kalyan became operational from March 1976 providing accommodation for another 500 prisoners. The following figures relating to some of the jails indicate the extent of the problem of overcrowding :—

Sl. No.	Name of Prison	Authorised Accommodation	Maximum Occupancy
1.	Yervada Central Prison	2,179	4,157
2.	Nasik Road Central Prison	2,540	3,862
3.	Nagpur Central Prison	1,300	2,818
4.	Bombay Central Prison	1,074	2,122
5.	Thana Central Prison	789	1,707

MISA detenus were segregated from convicts and undertrials. Detenus were broadly categorised into Class I and Class II on the basis of the state of health, education, and mode of living. Generally, political detenus were given Class I status. COFEPOSA detenus were categorised as Class II detenus. Persons prosecuted under the DISIR or other laws were treated as ordinary undertrial prisoners while under trial and also after conviction.

20.76 No one was subjected to solitary confinement. 2,625 persons arrested or detained during the emergency required specialised medical treatment, out of whom 1,404 had to be hospitalised during the period of their detention or trial. 11 MISA detenus died while under treatment in hospitals. Two of the MISA detenus died while on parole and 4 died within one month of their release from detention. Magisterial inquiries were ordered in all the 11 cases. No negligence on the part of jail or hospital authorities was found in the enquiries conducted into ten of these cases. No inquiries were held regarding cases of death while on parole. Two persons detained under the COFEPOSA died in prison while under detention. No magisterial inquiry was ordered into these cases.

20.77 Interviews were granted in accordance with Condition No. 14 of the Maintenance of Internal Security (Maharashtra Conditions of Detention) Order, 1971. Initially, the number of interviews was limited to one per fortnight in the case of Class I prisoners and one per month in the case of Class II prisoners, excluding special interviews for legal advisers or election agents. The orders in this regard were subject to changes from time to time. In certain cases, interviews were denied as a measure of punishment. COFEPOSA detenus were permitted interviews with their relatives only once a month. Subsequently, as a result of the judgment of the High Court (Criminal Application 20/1975), COFEPOSA detenus were permitted interviews once a week with their family members, relatives, friends and counsel. Separate diet was arranged for MISA and COFEPOSA detenus. Special diet was also provided to the detenus on the recommendation of the doctor.

20.78 Because of overcrowding, sanitation had been adversely affected in most of the jails. In the Nagpur Central Prison, water supply was very inadequate.

20.79 Although no incidents of riots were reported in any of the prisons, there was a scuffle between two groups of MISA detenus in Visapur District Prison on December 10, 1976. The jail staff which went to control the situation sustained some injuries. 89 detenus also sustained minor injuries during the scuffle. In Thana District Prison, token hunger strike was resorted to six times by certain prisoners to press their demand that they be shifted to jails near their homes.

20.80 No Class I detenu was handcuffed or put in fetters. Nor were their barracks locked during the night. Permissible facilities like use of their own radios, provision for indoor and outdoor games, use of fans and cots were allowed. Detenus were also provided with hot water for their bath. Detenus were provided with newspapers at Government cost and were also allowed to buy such newspapers, periodicals, etc., which were on the approved list.

MANIPUR

20.81 As against the authorised accommodation for 350 persons in the Manipur Central Jail, Imphal, there were 318 prisoners in that jail on June 25, 1975. During the emergency, the total number of prisoners arrested in Manipur under the MISA, COFEPOSA and DISIR was as follows :

MISA	... 143
DISIR	... 228
COFEPOSA	... 13

20.82 Some of the persons who were detained under the emergency laws and rules were kept along with other prisoners in the same wards although they were given better facilities. The Central Jail was established in the year 1912. Though an old building, it is well maintained. The jail had only a part-time Superintendent. Presence of a large number of non-criminal lunatics—roughly 20 per cent—poses a serious problem to the jail administration. As there is no separate mental hospital in the State, these lunatics are kept in the Central Jail. Persons arrested under the MISA, were classified into three classes viz. 'A' and 'B' and 'C'. COFEPOSA detenus were kept as ordinary class prisoners. A number of MISA detenus had to represent and fight long battles to get their classification changed. The District Magistrate had the authority not to accept the classification made by the magistrate. In the case of eight workers of the Bharatiya Jan Sangh, it was noticed that the District Magistrate did not implement the classification made by the magistrate with the result that the detenus were not given 'A' class treatment.

20.83 14 MISA, DISIR prisoners were given medical aid as indoor patients in the Jail Hospital and two were sent for specialised treatment. No detenu died during the period of his detention or shortly thereafter.

20.84 Interviews were granted to legal advisers and family members as and when needed. Detenus desirous of appearing at an examination were allowed to take the examination inside the jail campus, instead of being released on parole. Newspapers and other periodicals were supplied to the detenus. They were also provided with recreational facilities. In the Manipur Central Jail, a large number of undertrial prisoners were kept in the open or in the workshops in view of the sudden influx of prisoners during the emergency.

MEGHALAYA

20.85 As against authorised accommodation for 335 prisoners (Shillong Jail 230 and Tura Jail 105) there were 521 persons in custody on June 25, 1975.

20.86 During the emergency the number of persons taken into custody under MISA, COFEPOSA and DISIR was as under :—

MISA	...	39	(including one arrest made in Bihar but detained here).
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COFEPOSA	...	6
DISIR	...	20

20.87 The MISA and COFEPOSA detenus were kept separate from convicts and undertrials. Keeping in view the overcrowding in the jails, the Government acquired a house in the Cleve Colony in Shillong and shifted thereto 37 non-criminal lunatics from the Shillong jail on March 19, 1976. Similarly, 24 juvenile delinquents were shifted from Shillong to Sohiong on April 6, 1976. Following release of Naga political prisoners on May 8, 1976 from Special Jail Mewlai, the detenus were shifted there on May 11, 1976.

20.88 Supply of water to Shillong jail was found to be very inadequate.

20.89 In the absence of sufficient space in the Shillong jail, there was difficulty in providing recreational facilities to detenus. However, periodicals and magazines were supplied as per the provisions in the Detention Order. Under the provisions of Meghalaya Detention Order, the MISA and the COFEPOSA detenus were generally classified into two categories : Class I and Class II. Persons requiring specialised medical treatment were provided with the same. From the records it is seen that jail visitors complained of inadequacy of medicines which was largely due to the fact that the Purchase Board of the Department had not met for more than a year and the doctor was not permitted to purchase medicines for a sum exceeding Rs. 50 per annum. The Board of Visitors which visited Shillong jail on May 25, 1977 i.e. two months after the lifting of the emergency had observed :

"..... The acute shortage of medicines coupled with the over-crowded conditions in the jail have had a disastrous effect upon the health and may even threaten the lives of the inmates."

20.90 Normally interviews as per the provisions of the rules were granted. It is noticed that all

such persons who were not classified by the detaining authorities in the detention order were admitted as Class II detenus. Even Shri M. N. Majaw, a sitting MLA who was detained on September 18, 1975, was admitted as a Class II prisoner. His classification was changed to Class I on September 19, 1975 on the basis of a representation sent by him from the jail. S/Shri Ram Naresh Pandey, Shekhar Ranjan Das, Raj Kumar Bhattacharjee, Brij Raj Mishra, Kumud Bandhu Bhattacharjee, Janardan Tiwari and Acharya Adi Shivanand Avdhoot, who had been detained in the first week of July 1975, sent a petition on July 17, 1975 requesting for higher class. The matter was examined and orders classifying these detenus as Class I prisoners were issued on August 6, 1975. Shri Ratan Kumar Palit detained on August 22, 1975, sent a petition on September 27, 1975 challenging his classification as Class II prisoner and requesting for higher class. He was a lecturer and was detained on account of his alleged RSS affiliations. DIG Special Branch was requested on November 13, 1975 to send his views on the petition. The DIG wrote on December 13, 1975 that the representation of the individual was correct. However, the Home Department did not agree and Shri Palit continued to remain a Class II prisoner until July 1, 1976 when his case was re-examined and he was granted higher class. He remained a Class II prisoner for over ten months despite the fact that his claim for his elevation to the higher class appeared justified as is evident from the noting on the file. Another detenu named Lila Ram who was detained on March 31, 1976 got his classification changed from Class II to Class I on June 25, 1976 after representing to the authorities.

NAGALAND

20.91 As against the available accommodation for 700 prisoners, 450 prisoners were kept in the Nagaland jails on June 25, 1975. Entry of 92 MISA detenus and 4 DISIR prisoners therefore did not pose any problem for the jail administration. These prisoners were provided separate accommodation and given classification as per Detention rules. However, a number of persons detained under the emergency laws were shifted outside Nagaland. The Inspector General of Police, Nagaland has stated that the MISA detenus were transferred outside Nagaland in view of the fact that facilities to be provided to MISA detenus were not available in the Nagaland jails. Some of the detenus, on the other hand, were transferred outside in the interest of security of the State. In the course of investigation by the Commission's investigating officers, it was found that Shri Rushulo, an ex-Minister, was handcuffed on November 3, 1976 while being taken from District Jail, Kohima to Central Jail, Dimapur.

20.92 Adequate medical facilities were available in different jails.

20.93 Interviews were granted in accordance with the existing order.

20.94 The Home Secretary, Nagaland has reported that apart from the Central Jail at Dimapur and 3 District jails, there were no proper jail buildings in

the sub-divisions. Some of the administrative buildings had been converted into jail buildings and this might have caused inconvenience to the detenus initially.

20.95 No person died while under detention or within one month from the date of their release on parole or otherwise.

20.96 Facilities for newspapers and periodicals were given and recreational facilities were also provided to the detenus.

ORISSA

20.97 As against authorised accommodation for 6668 prisoners the population in the various jails of Orissa stood at 10222 on June 25, 1975. The number of persons detained/arrested during the period of the emergency was as under :—

MISA	—	408
COFEPOSA	—	3
DISIR	—	762

Thus there was considerable overcrowding in the jails of Orissa during the emergency.

20.98 The detenus under the MISA and the COFEPOSA were categorised as higher class prisoners. No separate arrangement was made for lodging the detenus. Some of them were accommodated in the Central Jail at Cuttack and the Circle Jail at Berhampur, where separate wards were available for accommodating higher class prisoners. In other jails where facilities were not available for lodging higher class prisoners, steps were taken to provide the necessary amenities to these detenus.

20.99 Even though the detenus were kept in those very jails where ordinary prisoners had been confined, generally they were segregated from ordinary prisoners. The persons arrested under the DISIR were treated as ordinary prisoners and provided with facilities in accordance with the classification made by the courts concerned.

20.100 Under Clause 2 of the Orissa Security Prisoners (Conditions of Detention) Order, 1971, persons detained under the MISA were categorised as class 'S' prisoners and they were entitled to receive the same treatment as was admissible to prisoners in Class One. They were provided with clothing, bedding, furniture and other facilities admissible to prisoners in Class One. They were allowed to smoke inside the jail. Complaints about the inferior quality of food served to the detenus and inadequate clothing and bedding provided to them, were made by the detenus from time to time. These complaints were referred to the Inspector General of Prisons for necessary action. The facilities admissible to the MISA detenus were extended to the COFEPOSA detenus.

20.101 15 detenus were given solitary confinement as a measure of punishment for violating jail rules.

20.102 105 persons arrested under emergency laws were provided with specialised medical treatment. Out of them 52 were hospitalised in hospitals outside the jail for treatment as indoor patients. Longer periods of hospitalisation were allowed in cases where the patients were suffering from serious illness. In 91 cases diet different from that normally admissible to Division One prisoners was provided at Government cost on the advice of the doctor. Although medicines were provided at Government cost, spectacles and cervical collars prescribed by doctors were not provided as they were not admissible under the Orissa Security Prisoners (Conditions of Detention) Order, 1971 and the Jail Manual.

20.103 Persons admitted to medical college hospitals for treatment as indoor patients were given special diet for which an additional cost of Rs. 3 per day was allowed.

20.104 No one detained or arrested under emergency laws died during the period of his incarceration or within one month after his release.

20.105 Interviews with detenus were allowed as per provisions contained in Orissa Security of Prisoners (Conditions of Detention) Order, 1971 and the instructions issued by the Government of India from time to time. Initially friends and members of their family were not granted interviews. The counsel of the detenu, however, was permitted to have an interview with him in the presence of officials detailed for this purpose. Subsequently the rules were relaxed and members of the family were allowed to have an interview with the detenu subject to certain restrictions.

20.106 On April 12, 1976, the jail staff resorted to lathi charge to control a situation allegedly involving clash between two groups of detenus. As reported by the State Government, 17 detenus and 10 members of the jail staff sustained injuries as a result of this incident. Following this incident, the Government suspended the facility regarding the grant of interview with the detenus in Sambalpur Jail "as a precautionary measure". In Koraput jail it was alleged that the prisoners were physically assaulted and subjected to lathi charge on May 4, 1976. The Inspector General of Prisons, who conducted the inquiry held that during a test alarm parade held in Koraput jail at 11.00 a.m. on May 4, 1976, five prisoners did not obey the instructions and refused to get into the respective wards. They were over-powered by the warders, taken to the respective wards and locked up. As per report submitted by the Inspector General of Prisons, no lathi or baton was used and none of the prisoners sustained any injury. Of the five prisoners involved in the incident, two were under-trial prisoners and three were convicts.

20.107 In 33 cases permission for interview was refused as a measure of punishment. In a few cases where permission had been granted for interviews, they could not be held reportedly because the officer who was required to remain present during the interview did not turn up.

20.108 Prisoners were permitted to receive food from outside. Newspapers were provided to Division One and Division Two prisoners. Detenus and prisoners in higher division were permitted to use the jail library. Detenus under the MISA were permitted to receive censored books and periodicals and newspapers from friends and relatives. Facilities for indoor games were also provided. In some of the jails, facilities for outdoor games existed. As intimated by the Government, no detenu was permitted to use his own radio while under detention. All the district jails except one had been provided with radio sets and radio programmes used to be broadcast through the loudspeakers fixed at convenient points inside the jails.

20.109 An officer of the Commission had visited certain jails in the State and found that the sanitary conditions of the jails were generally unsatisfactory. The latrines and the bathing platform were lacking in privacy.

PUNJAB

20.110 As against the authorised accommodation for 6746 prisoners there were 7312 prisoners in the jails in Punjab as on June 25, 1975.

20.111 During the emergency, the number of persons detained/arrested under different laws was as under :

MISA	440
COFEPOSA	73
DISIR	2423
U/Ss 107/151-Cr PC	3784
Economic Offences (U/Ss 7 of the EC Act and 114 of the DIR)	714
U/S 188 IPC.	596
Others	25

20.112 The persons arrested or detained in connection with the emergency were accommodated in the same prisons where ordinary convicts or under-trials had been kept. However, they were kept in separate wards and barracks as also in tents. Barring those who had been awarded 'B' Class by the Courts, all other prisoners under the DISIR were given ordinary class in Amritsar Jail. Barring Members of Parliament and Members of Legislative Assembly who were classified as special class detenus, all others were treated as ordinary class detenus in the Patiala Jail. The sanitary conditions including the sewage system were found to be in a very good order in the Amritsar Central Jail. In Patiala Jail, on the other hand, the condition was different and 25 extra latrines were got constructed for the use of MISA and COFEPOSA detenus. Four persons were confined to cell as a measure of punishment for violating jail rules.

20.113 500 prisoners were referred to medical specialists from Amritsar Central Jail. An additional post of Pharmacist was attached to the Jail hospital in Patiala Jail but none was posted till the lifting of the emergency. There was no shortage of funds

for purchase of medicines and other items. Ayurvedic treatment was given to Shri Balbir Singh. Two persons arrested under Section 151 died in the Central Jail, Amritsar; they are —

(i) Kaur Singh son of Veer Singh.

(ii) Prem Singh son of Phool Singh.

While the circumstances leading to the death of the former are still under inquiry, the enquiry in respect of the latter has been completed and the Sub-Divisional Magistrate has held that had the patient been taken to a T.B. clinic, his life could perhaps have been saved. The doctor has also been held responsible for not giving him special attention.

20.114 Interviews were granted as per rules and the guidelines issued by the Government of India from time to time. Interviews with detenus were denied in five cases as a measure of punishment.

20.115 Periodicals and newspapers on approved list were supplied to the detenus who were also allowed to obtain on payment newspapers and periodicals included in the supplementary list.

RAJASTHAN

20.116 As against authorised accommodation for 7515 prisoners in the various jails in Rajasthan, the jail population stood at 6158 on the eve of the proclamation of the emergency. The number of persons detained/arrested during the emergency is as under :

MISA	... 952
COFEPOSA	... 23
DISIR	... 1360
Section	
151 Cr PC	... 2600

In order to accommodate important political prisoners, the Government of Rajasthan made use of three bungalows in Jaipur and one in Alwar. In some of the jails where MISA detenus were kept, care was taken to ensure that these detenus were segregated from ordinary criminals. At some places, however, this distinction could not be maintained for want of adequate space in the jails. Most of the persons detained under the MISA were categorised as 'B' Class detenus and those detained under the COFEPOSA as 'C' Class detenus. In 8 cases MISA detenus were kept in solitary confinement as a measure of punishment for violating prison discipline.

20.117 206 detenus were hospitalised, out of whom 178 received specialised medical treatment. No prisoner died in the jail during the emergency. Two persons, one of whom was suffering from cancer and the other from T.B. died shortly after their release. MISA detenus were categorised as Class I, Class II and Class III prisoners. In accordance with the provision in the Rajasthan

(Condition & Detention) Order, 1971, Class I prisoners were granted interviews once in two months and Class II prisoners once in three months. Subsequently, following an amendment of this Order on August 4, 1975, interviews were granted once a month. On December 18, 1975 this Rule was further relaxed and the District Magistrates were empowered to grant interview to Class I detenues once a week and Class II detenues once a fortnight.

20.118 Special diet was given to the MISA detenus. In one case the detenu was allowed to obtain food from his house regularly.

20.119 Newspapers and periodicals on the approved list were made available to the political prisoners and wherever possible recreational facilities were provided. Although the Government of Rajasthan had forbidden use of handcuffs in respect of MISA detenus, there were complaints of handcuffing at the time of their initial arrest or in the course of their transfer from one jail to another or from the jail to the court.

20.120 MISA detenus were provided with furniture and also given an allowance varying from Rs. 20 to Rs. 30 per month for the purchase of toilet articles.

20.121 Besides sanctioning family maintenance allowance to the detenus, Government of Rajasthan had permitted student detenus to appear at examinations while under detention. Some of the students were provided text books purchased from the market and instructions had been issued for relaxing conditions regarding their attendance in the educational institutions.

SIKKIM

20.122 As against an authorised accommodation for 30 prisoners in the Sikkim Jail, there were 26 convicts and 73 undertrial prisoners in this jail on June 25, 1975.

20.123 Four persons were detained during the emergency under the MISA. They had been kept segregated from convicts and undertrial prisoners before being sent to Behrampur Central Jail in West Bengal, because of inadequate accommodation in the Sikkim Jail.

20.124 The four detenus, who were transferred to West Bengal, were initially released on parole and subsequently the parole order was withdrawn. None of them made any request for interviews with outsiders.

TAMIL NADU

20.125 An Enquiry Commission has already looked into the conditions of jails in Tamil Nadu. Therefore the Commission is not recording a note on the conditions in jails in Tamil Nadu.

TRIPURA

20.126 As against authorised accommodation for 519 prisoners, there were 730 prisoners in the jails in Tripura on June 25, 1975. The total number of persons arrested/detained under different emergency laws during the emergency was as follows :—

MISA	77
CFE & PS Act	25
DISIR	99—(8 of them were subsequently detained under the MISA)

20.127 In view of the inadequacy of accommodation, some of the detenus were transferred to jails outside the State. Barring higher class detenus who were kept in separate wards, the other detenus were kept along with ordinary prisoners. The prisoners were classified into category A, B and C, depending upon their status etc., as applicable under the rules.

20.128 Tripura Jail has one post each of a Discipline Officer and a Welfare Officer. Besides, this jail has one Medical Officer, one Compounder and a Clinical Psychiatrist, since the jail has a good number of non-criminal lunatics. The Central Jail did not have electric fans earlier, but these have been provided recently. A special feature in this jail is the deputation of an officer from the Education Department to help the inmates prosecute their studies. Only members of the registered political parties were given the highest class i.e. Class C while others were given Class B or A. Some of the detenus had to appeal to the High Court for their re-classification.

20.129 Student detenus were allowed to take their examination in the jail itself and for this necessary facilities were provided.

20.130 No individual was kept in solitary confinement.

20.131 It is seen from the reply of the State Government that quite a number of detenus and inmates were sent for specialised medical treatment in the G.B. Hospital. No one died during his detention in the jail or within a month after his release on parole or otherwise.

20.132 Interview was granted as per rules. Only in one case interview was refused and that too on medical grounds.

20.133 Special diet was given on medical grounds to 57 detenus. One detenu was allowed to get food from outside on religious grounds.

20.134 Requests for supply of newspapers and journals were generally acceded to and recreational facilities were also provided.

20.135 On the whole due to transfer of a large number of prisoners from Tripura, the problem of accommodation could be solved to some extent.

20.136 A Visitors' Board, comprising District Magistrate, Inspector General of Prisons, Deputy Director, Health Services, District Judge, as official members and one Advocate, one Teacher and two ladies from among the public as non-official members has been functioning in a regular manner as could be seen from the register containing details of visits of the Board or its members to the Jail.

UTTAR PRADESH

20.137 All the jails in Uttar Pradesh combined can accommodate 35339 prisoners and on June 25, 1975, 33058 prisoners were already locked up in those jails. As intimated by the U.P. Government, as many as 7185 persons were detained under MISA and 126 under COFEPOSA during the period of the emergency. In addition, 24761 persons were arrested under the DISIR. Thus, as many as 32072 persons were sent to jail some time or the other during the emergency and this was in addition to the normal influx of prisoners. The U.P. Government have admitted that all the persons arrested during the emergency were accommodated in the existing jails and no additional arrangements were made to cope with the unusual increase in the jail population. Inspection of some of the jails has revealed that certain jails like those at Kanpur and Moradabad were overcrowded. This was in contrast to the position obtaining in the jails at Agra, Naiini and Varanasi where the jail population throughout the period of the emergency was much less than the authorised accommodation.

20.138 Persons arrested or detained were kept in the same prisons where convicts/undertrials had been accommodated but in separate barracks. Generally MISA detenus were given superior class. For ex-Ministers and prominent political leaders, special arrangements had been made for their diet etc. COFEPOSA detenus were treated as ordinary class prisoners. Necessary screening was done by the District Magistrate to prevent anti-social elements and criminals from securing superior class facilities.

20.139 Because of overcrowding in some of the jails, many detenus had to sleep on the floor.

20.140 Sanitary facilities were generally inadequate.

20.141 The punishment of solitary confinement was given for hunger strikers, for raising slogans against the Government at the time of flag-hoisting, threat of resorting to hunger strikes, etc. MISA detenus S/Shri Mahabir Singh, Brahma Saran Khanna, S. K. Sharma, S. S. Sarraf, Lala Om Parkash were awarded solitary confinement for 5 days for threatening to go on hunger strike. In District Jail Moradabad, MISA detenus S/Shri Manjoora, Mohd. Hussain, Liladhar, Madan, etc. were put in solitary confinement for 3 months with fetters when they threatened to go on hunger strike on October 7, 1976. In Central Jail, Varanasi MISA detenus Sarvshri Rajendra Kumar, Kanhiya Lal, Mahesh Chand Yadav, Bhagwan and Nand Lal and 28 others were put in solitary confinement for three months

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with fetters when they refused to take food and breakfast and raised slogans against the Prime Minister, Chief Minister and others.

20.142 As intimated by the Government, there were 7 cases in which detenus were denied normal facilities of interview. In 6 out of the 7 cases, persons seeking interviews with detenus were denied this facility as they were not eligible for the interviews under the rules. In one case interview was denied as a measure of punishment because the detenu had committed violence in the jail hospital.

20.143 Newspapers and periodicals as approved by the Government were given to the MISA detenus. They were also provided with facilities for games and recreation.

20.144 In view of the overcrowding in jails, the medical facilities fell far short of requirement.

20.145 In all, 16 persons held under the MISA and 14 persons held under the DISIR, died during the period of their incarceration. The U.P. Government have intimated that in all the 16 cases of MISA detenus, magisterial inquiry was held to find out whether there was any negligence on the part of the jail or other authorities. Regarding the death of DISIR prisoners, magisterial inquiry was ordered in 11 cases. In the course of the investigation conducted by the officers of the Commission, it was noticed that the family planning programme was overzealously implemented in some of the jails with the result that there were many allegations of coercion and deception against the jail authorities in the implementation of the Family Planning Programme.

20.146 It may be added here that no uniform practice is followed regarding the use of radios by the detenus. While in Haryana and other States radios were freely permitted to the MISA detenus, it was not so permitted in many States including Uttar Pradesh. The Commission feels that in the eventuality of resort to preventive detention, there should be no bar to allowing the detenus using the facilities such as their own radios with such restrictions as the Government might prescribe to ensure that co-detenus are not inconvenienced.

WEST BENGAL

20.147 As against authorised accommodation for 20237 prisoners in all the jails of West Bengal put together, there were 25599 prisoners in the jails in that State on June 25, 1975. The number of persons detained/arrested during the period of the emergency was as under :—

MISA	... 5,320
COFEPOSA	... 80
DISIR	... 2,545

20.148 The problem of overcrowding was thus considerably aggravated during the emergency. Detenus, though kept in the same prison, were accommodated in separate wards. The State Government has

said that "complete segregation was not possible due to paucity of space". MISA detenus in Alipore Central Jail was seen to have been categorised into 'A', 'B' and 'C' classes. No detenus is said to have been kept in solitary confinement during the period of emergency, although two detenus under COFEPOSA and one under the MISA were said to have been kept in separate cells for reasons of security. Certain restrictions were imposed on prisoners following the Presidency Jail escape incident in February 1976, when a group of prisoners, allegedly Naxalites, escaped from Jail. On recapture, 18 escapees were put in fetters.

20.149 3346 detenus received specialised medical treatment or were hospitalised during the emergency.

20.150 11 persons died while under detention. The Executive Magistrate who had conducted the enquiry into the death of Shri R. K. Singh commented adversely on the unsatisfactory arrangements for treatment. Two Jail Warders were punished for negligence of duty pursuant to the suicide by Ajit Patra, a prisoner, in June 1976.

20.151 Pursuant to instructions issued by the Government of India, interviews were being allowed to family members of detenus once a week. However, restrictions were imposed on Naxalite and other extremist detenus, disallowing interviews with their friends.

20.152 Special diet on the basis of medical advice was allowed to the detenus and other prisoners. Prisoners of all categories were also allowed to receive uncooked food from friends and relatives.

20.153 Newspapers and periodicals were being supplied to the detenus who were also allowed indoor and outdoor recreational facilities. However, facility for outdoor games and other amenities involving gathering of a large number of prisoners was suspended after the Presidency Jail escape case in February 1976, on grounds of security.

ANDAMAN & NICOBAR ISLANDS

20.154 As against authorised accommodation for 105 prisoners, there were 119 prisoners in the district jail, Port Blair on June 25, 1975.

20.155 During the period of the emergency, the number of persons detained/arrested under different emergency laws was as under :

MISA	41—(including one person detained twice and one detained at Madras)
DISIR	89
COFEPOSA	Nil

20.156 The MISA prisoners were accommodated on a separate floor. The District Jail, Port Blair is a three-storeyed building, each storey having 35 cells. There are 98 cells for men and 7 for women.

20.157 All the MISA detenus were treated as Class II prisoners though there was a provision for classifying them as Class I detenus on the basis of social status, education, etc. Arrangements for cooking were found to be unsatisfactory. No one was awarded solitary confinement during this period.

22.158 Only one detenu was admitted to Hospital for specialised treatment. As per Andaman and Nicobar Islands MISA Rules, 1971, interviews with the detenus were granted only once a week and not more than three persons at a time could interview the detenu.

22.159 No detenu or prisoner died during the period of his incarceration or within one month after his release. Newspapers, periodicals and books were supplied to the detenus as per rules and detenus were also allowed to bring their private books and papers subject to censorship. Although there was lack of open space for outdoor games like volleyball and badminton, facilities for some indoor games had been provided to them at Government cost.

ARUNACHAL PRADESH

20.160 There are no jails in Arunachal Pradesh. Therefore there is nothing to report.

CHANDIGARH

20.161 As against authorised accommodation for 110 prisoners there were 98 prisoners in the jail at Chandigarh on the eve of the proclamation of the Emergency. The number of persons arrested/detained during the emergency is as under :

MISA	...	27
DISIR	...	74
COFEPOSA	...	1

20.162 Some tents were pitched inside the jail for lodging ordinary prisoners. A separate barrack was made available for accommodating the MISA detenus. The guest house of the Post Graduate Institute was declared as a subsidiary jail in order to accommodate Shri Jayaprakash Narayan, who was undergoing medical treatment in the Institute. Excepting the Members of the Legislative Assembly, all other MISA detenus were given ordinary class. The Members of Legislative Assembly were categorised as a special class of detenus. Generally medical facilities were provided to the detenus inside the prison. In special cases, however, treatment was given in the jail hospital or the Post Graduate Institute on the advice of the doctor. Shri Lekhan Pal, a MISA detenu had a heart attack during the period of his detention. He died within 24 hours of his release on parole. A magisterial inquiry was ordered into his death and the report of the inquiry in this regard is awaited.

20.163 Interviews were granted to the members of the family of the detenus as per rules. In special cases, special diet was given on the advice of the doctor. The detenus were provided facilities for

cooking. Friends and relatives of MISA detenus were permitted to bring food for the detenus. The detenus were provided with newspapers. Recreational facilities were also made available.

DADRA AND NAGAR HAVELI

20.164 There is only one sub-jail having an authorised accommodation for 20 prisoners. On June 25, 1975, there was no prisoner in this jail.

20.165 During the emergency, two persons were detained under the COFEPOSA and 3 were arrested under the DISIR. None was detained under the MISA. As per the rules, only undertrials and persons sentenced to imprisonment for periods not exceeding 3 months were kept in this sub-jail. Persons sentenced to imprisonment for periods exceeding 3 months and detenus under COFEPOSA were sent to Central Prison, Baroda. It has been reported by the State Government that persons detained under the COFEPOSA at Baroda were segregated from convicts and undertrial prisoners. Detenus under the COFEPOSA were treated as Class II prisoners. There was no major case of illness requiring specialised treatment. Detenus were granted interviews as per the COFEPOSA Rules. Detenus were allowed to obtain food from outside. In certain instances, on medical grounds, they were supplied the prescribed diet at Government cost.

20.166 Newspapers and books were made available and recreational facilities were provided to the detenus at Government cost.

DELHI

20.167 The subject has been covered in detail in Chapter XI of the Second Interim Report of the Commission.

GOA, DAMAN AND DIU

20.168 The authorised accommodation in all the jails in Goa combined was for 445 prisoners and the jail population as it stood on June 25, 1975 was 147. During the Emergency the number of persons taken into custody under different emergency laws was as under :—

MISA	...	113
COFEPOSA	...	68

20.169 MISA detenus were kept mostly in Central Prison at Aguada. 12 MISA detenus, however, were transferred to Nasik Prison for lack of sufficient accommodation. COFEPOSA detenus were sent to prisons outside the Union Territory with a view to keeping them away from the area of their operation. While Class I detenus were allowed interviews once every fortnight, Class II detenus were granted interviews once every month. Subsequently, the rules were liberalised and interviews were granted 4 times in a month. The detenus were permitted to write letters and writing materials were supplied at Government cost. Daily newspapers, both in English and in

regional languages, were also supplied to them. Interviews with legal practitioners were also permitted. The MISA and COFEPOSA detenus were permitted to wear their own clothes and use their own bedding. Detenus were allowed to spend Rs. 50 per month for their daily necessities. One MISA detenu was kept in solitary confinement for 4 days for violation of prison discipline. Similarly a COFEPOSA detenu was also kept in solitary confinement for 3 days on the same grounds.

20.170 20 detenus required specialised medical treatment and hospitalisation and they were provided with the same in the Goa Medical College Hospital. Central Jail Goa has only a small dispensary with one male nurse to look after the work. A part-time doctor from the Primary Health Centre visits the Central Jail twice a week. The sub-jails have neither a full time doctor, nor a dispensary. A doctor visits the jail twice a week only. Cases requiring specialised treatment are referred to civil hospital. No detenu died either during the period of his incarceration or within one month after his release on parole.

20.171 Water supply to the Reis Magos Jail and the sub-jails was found to be utterly inadequate. The jail well at the base of the hill having dried up, the prisoners had to bring water in buckets. The Daman jail does not have flush type latrines.

LAKSHADWEEP

20.172 As intimated by the Lakshadweep Administration, neither any detention under the MISA or COFEPOSA nor any arrest under the DISIR was made during the Emergency.

MIZORAM

20.173 As against the authorised accommodation for 192 prisoners in the three jails of Mizoram, the jail population stood at 381 on June 25, 1975. During the emergency the number of persons detained/arrested under MISA and DISIR is as under :—

MISA	...	70
DISIR	...	136

20.174 The problem of overcrowding was thus aggravated during the emergency. The administration sought to tackle this problem of congestion by transferring about 100 prisoners to jails in other States and by keeping most of the security prisoners in the Camp Jail, Tuirial. This, however, did not lead to the desired improvement in the living conditions of the prisoners either by way of segregation of undertrial prisoners from the convicts or the provision of requisite amenities to the higher class prisoners, mostly leaders. Security prisoners were categorised as Class I and Class II prisoners. MISA detenus were provided facilities for cooking and were issued four blankets each. No prisoner was put in solitary confinement in any of the jails in Mizoram. There was no case of death in custody during the period of emergency.

20.175 Medical and sanitary facilities in these jails were extremely inadequate. It is seen from a

report from the Medical Officer to the Inspector General of Prisons that there were numerous cases of diarrhoea, dysentery, fever etc. for which proper medical treatment could not be rendered due to lack of medical supplies. While there was a number of prisoners suffering from mental disease especially in the Central Jail at Aizawl, there was no trained Psychiatrist available for their treatment.

PONDICHERRY

20.176 There was accommodation for 2,085 prisoners in the jails in Pondicherry. The number of prisoners on June 25, 1975 was only 156.

20.177 The total number of persons detained or taken into custody under emergency laws was 115—54 being under the MISA, 54 under the DISIR, 7 under the COFEPOSA. Persons detained under the MISA and the COFEPOSA or arrested under the DISIR were segregated from convicts and undertrial prisoners. The detaining authorities used to classify

MISA detenus as 'A', 'B' and 'C' Class detenus under the Pondicherry Detenu Rules. However, persons arrested under the DISIR were treated under normal jail rules like other undertrial prisoners. COFEPOSA detenus were treated in a special category under the Pondicherry Security Prisoners' Order, 1975. There was no case of solitary confinement. Hospital and medical facilities were adequate. One detenu under the COFEPOSA, who required specialised medical treatment for skin disease, was given this treatment. There was no case of death of a detenu or a prisoner during emergency while under detention or within a month after his release. The State Government also reported that detenus were granted regular interviews in accordance with the rules. MISA and COFEPOSA detenus were allowed to supplement their diet at their own cost. Detenus were also permitted to cook their own food if they so desired. Newspapers, both in English and Vernacular and Weeklies were supplied to the detenus. Recreational facilities including some indoor games were provided to the detenus. Detenus were allowed to listen to radio broadcasts.

CHAPTER XXI

Implementation of the Family Planning Programme during the Emergency

In a background note on family planning programme during the period of emergency furnished to this Commission by the Ministry of Health and Family Welfare, it is stated that :—

“The family planning programme in India is implemented in the field through the State Governments as a Centrally sponsored scheme for which hundred per cent Central assistance is being provided to the States on an assured basis.....The Central assistance is being provided to overall policy guidelines...The actual implementation rests with the States...”

Voluntary nature of the Family Planning programme

21.2 The manner in which the family planning programme should be implemented in the States has also been receiving attention of the Ministry of Health and Family Planning from time to time and guidelines in this regard figured in various pronouncements and papers emanating from the Ministry. Dr. Karan Singh, the then Union Minister of Health while inaugurating the Central Family Planning Council meeting on April 5, 1974, stated as under :—

“While the fixing of targets is useful to guide the workers on the level of achievement strategies have to be developed to see that the people themselves readily accept the programme without any compulsion. Family planning must be a voluntary and people's programme... Motivation, persuasion and creating health and family planning consciousness in the country is one side of our effort. The other side is the provision of services.....”

21.3 Similarly, a paper prepared by the Ministry of Health and Family Planning and placed before the meeting of the Family Planning Council on April 5, 1974 emphasizes the voluntary nature of the programme in the following words :—

“.....Since sterilisation is a permanent method and averts a large number of births eventually, as compared to other methods, greater importance is sometimes attached to this method by the officials at all levels although it is not strictly in keeping with our policy of ‘Cafeteria Approach’. There should be no compulsion about or insistence on any particular method or device

out of various available methods because local conditions and people's preferences vary from place to place... The aim should be to protect the targeted number of reproductive couples against the risk of pregnancy, leaving the final choice of the contraceptive method, to the couples themselves...”

Change in the voluntary nature of the programme during the emergency

21.4 The voluntary nature of the programme as adopted by the Government of India till about 1974 appears to have undergone a change during the period of emergency as appears from a note dated October 10, 1975 sent by Dr. Karan Singh, the then Union Health Minister to the then Prime Minister on the subject of “Crash programme to intensify family planning”. An extract from this note is given below :—

“...The problem is now so serious that there seems to be no alternative but to think in terms of introduction of some element of compulsion in the larger national interest.... While I am not at this stage advocating compulsion, it is essential that our policy should exhibit the determination of the Government to bring home the realisation of the importance of the containment of population to individual families. This can be done by enforcing a judicious and carefully selected mixture of incentives and disincentives... The present emergency, and the declaration of the 20-point economic programme by the Prime Minister, have provided an appropriate atmosphere for tackling the problem...”

21.5 A change in the approach of the Government of India is also evidenced by the proceedings of the meeting of the Consultative Committee of MPs attached to the Ministry of Health and Family Planning held on January 20, 1976, in which Dr. Karan Singh spoke of some sort of compulsion in regard to the implementation of the family planning programme. An extract from the minutes of this meeting reads as under :—

“...The Chairman added that so far the family planning programme had been voluntary in nature but a point had been

reached when it was necessary to introduce some sort of compulsion. Some of the States had already introduced such measures. The Central Government would not stand in the way of other States following suit....."

21.6 At about the same time, Smt. Indira Gandhi, addressed the 31st Joint Conference of Association of Physicians of India on January 22, 1976, where she observed :—

"....We must now act decisively and bring down the birth rate speedily to prevent the doubling of our population in a mere 28 years. We should not hesitate to take steps which might be described as drastic. Some personal rights have to be kept in abeyance, for the human rights of the nation, the right to live, the right to progress....."

The above observations of the Prime Minister were given wide publicity by the Department of Family Planning through the pamphlet entitled 'Time to Act Decisively'.

21.7 Subsequently, in a note dated March 5, 1976 seeking the Cabinet's approval, *inter alia*, to a package of incentives and disincentives for Central Government employees, it was stated by the Ministry of Health & Family Planning that :—

"....To sum up, judged by the level of acceptance of family planning in the country so far and the great leeway that requires to be made up if the desired reduction in the fertility is to be brought and our developmental goals are to be achieved, it is necessary to go beyond the purely voluntary approach in the family planning programme....."

21.8 The Central Government's approach to the use of pressure in the family planning programme is also evident from the following reply given by the Deputy Minister of Health and Family Planning in the Lok Sabha to Unstarred Question No. 373 on March 11, 1976 :—

"....."

(b) The present demographic situation in the country seems to justify the introduction of certain pressure for the adoption of a small family norm in order that a better quality of life to the citizens is brought about as early as possible."

21.9 While the above pronouncements of the Central Leaders go to show a definite shift from the voluntary nature of the family planning programme, Shri Gian Prakash the Health Secretary did not concede any such shift in the policy of his Ministry. Relevant portion of a detailed note prepared by him and approved by the Union Health Minister prior to his leaving the Ministry as indicated in

the note of Shri Gian Prakash dated March 24, 1977 is reproduced below :—

"....it may be mentioned that the policy of the Government of India has always been to promote family planning as a voluntary measure, because the whole programme has been conceived as a family welfare programme. It has been the considered view of the Government of India in the Ministry of Health and Family Planning that family planning can be successful only through proper motivation and availability of services....."

Accent on sterilisation in the family planning programme

21.10 Alongwith change in the policy of the Government of India in regard to voluntary nature of the family planning programme, the cafeteria approach which had earlier been emphasised by the Health Ministry also appears to have been given up in favour of one single method i.e. sterilisation. This is evidenced by the figures furnished to the Commission by the Ministry of Health and Family Welfare according to which achievement of sterilisation targets was to the extent of 107 per cent and 190 per cent of the allotted targets in the years 1975-76 and 1976-77 respectively covering the entire period of emergency. As against this, the performance in regard to other methods of family planning actually fell far short of the given targets at national level. Shri Gian Prakash the Union Health Secretary has taken note of this in his letter dated January 15, 1977 to the State Governments in which he has mentioned that :—

"....Since we have already far exceeded the target for sterilisations, it would be advisable to concentrate during the next month on the distribution of condoms and promotion of acceptance of IUD and other methods, as acceptance of these methods has not been very satisfactory...."

This letter, however, was issued only on January 15, 1977 when the gap in the achievement of targets among various methods of family planning had already assumed abnormal proportion.

Fixation of sterilisation targets for 1976-77 by the Ministry of Health & Family Planning and revision thereof by the State Governments

21.11 In reply to the Commission's questionnaire relating to fixation of family planning targets, the Ministry of Health & Family Welfare have stated that a target of 4.3 million sterilisations was fixed for 1976-77 and was allocated to the States and Union Territories on the basis of the revised formula which took into consideration the population size and its rural-urban complexion, the expenditure on family planning, the female literacy rate and the performance in the previous years etc. The revised formula adopted for working out the targets of achievement in the family planning programme at

the National level and allocation of the targets to States and Union Territories was devised in 1975 by the Central Family Planning Council of which all the States and Union Territories Health Ministers are members and the Union Minister of Health is the Chairman. The relevant portion of the resolution passed by the Central Family Planning Council at its meeting held on April 17/19, 1975 is reproduced below :—

“The revised formula suggested for working out the targets is more scientific and the targets worked out according to this formula may be adopted. The realisation of these targets will require greater commitment and leadership at all levels...”

21.12 The State-wise sterilisation targets for 1976-77 which were mentioned as provisional and which according to the Central Family Planning Council's resolution were worked out on a scientific basis, were high compared to those fixed in the earlier years. In fact, in his d.o. letter No. 23011/20/76-Ply dated May 7/10, 1976 to all the Chief Secretaries, the Union Health Secretary mentioned that :—

“...the targets fixed for the year 1976-77...are fairly high and can be achieved only by maintaining the tempo and enthusiasm shown in the closing months of the last year...”

Further, the Special Secretary, Ministry of Health observed on his d.o. letter No. 23011/20/76-Ply, dated June 15, 1976 to the Chief Secretaries that :—

“...in view of the high targets set for the current year, stupendous efforts will need to make from the very beginning of the year in a well organised manner. Unless the whole administrative machinery is geared up and the same tempo and enthusiasm as was shown in the closing months of the last year is maintained, it may be difficult to achieve the targets...”

It was thus felt at the highest levels in the Ministry of Health & Family Planning that the sterilisation targets for 1976-77 were high and would require stupendous efforts to fulfil. Even so, according to information furnished by the Ministry of Health and Family Welfare and the State Governments to the Commission, these targets were subsequently raised to higher levels by a number of State Governments, e.g. Bihar (3 lakhs to 6 lakhs), Haryana (52,000 to 2 lakhs), Himachal Pradesh (31,500 to 1 lakhs), Maharashtra (5.62 lakhs to 12 lakhs), Madhya Pradesh (2.675 lakhs to 7 lakhs), Rajasthan (1.75 lakhs to 3.5 lakhs), Punjab (46,500 to 2.5 lakhs), Uttar Pradesh (4 lakhs to 15 lakhs), West Bengal (3.92 lakhs to 11 lakhs) and Delhi (29,000 to 1 lakh). Even though all these State Governments revised the targets by 100 per cent and more barring Assam, Maharashtra and Delhi, none of the other State Governments or Union Territories had exceeded the targets for the previous year by more than 40 per cent. Moreover, the Governments of

Bihar, Himachal Pradesh, Madhya Pradesh, Rajasthan and Uttar Pradesh who raised their targets for the year 1976-77 by 100 per cent to 300 per cent had not even achieved their respective targets in full for the previous year i.e. 1975-76. On the other hand, on a request from the Government of Haryana, the State's sterilisation target for 1975-76 was reduced by the Ministry of Health & Family Welfare from 74,300 to 45,000.

21.13 In this connection, Shri Gian Prakash has said in his detailed note of 24th March, 1977 :—

“The Government of India in the Ministry of Health & Family Planning had, after taking into consideration all factors, set a target of 4.3 million sterilisations for the financial year 1976-77. The States, however, decided to give to themselves a higher target. They were advised from time to time not to indulge in excesses and not to overstrain themselves in this regard. When the Union Health Secretary visited Lucknow on November 22, 1976, he held discussions with the Chief Secretary and other officers of the Government of Uttar Pradesh and advised them not to fix a target of 15 lakhs which the Government of Uttar Pradesh had set for itself. Health Secretary told them that the Government of India would be very happy if the Government of U.P. could achieve their target of 4 lakhs. He also warned them that there should be no excesses or coercion of any type in the promotion of family planning. Similarly, Special Secretary and Commissioner (Family Planning) advised other States during their tours that the States should ensure quality of service and not pitch up targets so high as to result in overstraining of the services. In a letter written by Smt. Serla Grewal, on September 9, 1976, this point was specifically emphasised. In several circulars issued from time to time emphasis was also laid on simultaneous provision of services and post-operative care....”

21.14 The records of the Ministry of Health and Family Welfare were scrutinised to ascertain the role played by the Ministry in restraining the concerned State Governments from pitching up targets far in excess of those allocated to them by the Central Government. The Ministry's file pertaining to the visit of Union Health Secretary to Lucknow and Kanpur on 22nd and 23rd November, 1976 (mentioned in his note above) contains a brief tour note on the above said visit but there is nothing on the file to show that any advice was tendered to the State authorities against upward revision of targets. The letter dated September 9, 1976 written by Smt. Serla Grewal, Joint Secretary, to Health Secretaries of all the State Governments, referred to in the Health Secretary's note also does not contain any specific advice or direction to the State Health Departments against upward revision of targets. The

letter, however, laid emphasis on the availability of technical services, as may be seen from the following extracts :—

“...The increasing work load will need additional service facilities particularly with regard to the equipments, linen facilities for autoclaving and sterilization... You will appreciate that in order that service facilities are maintained at high standard throughout, we must provide additional needs at the earliest so that the existing facilities are not stressed to a point where a compromise has to be made with safety of the acceptors.

“So long the additional facilities are not provided, please ensure that the number of cases operated in a day at any service centre are consistent with the technical facilities available there. Doctors should not be compelled to operate all the cases the same day, if the required facilities by way of sterilized linen, dressing etc. are not available.

“It is needless to remind you that increased work load should not be allowed to affect the aseptic precautions which are taken as the accepted procedures. Any negligence in this aspects may lead to greater problems in the form of post operative complications...”

21.15 The files relating to the tours of other senior officers of the Health Ministry made available to the Commission do not contain anything to show that the Central Health Ministry tried to dissuade the State Governments from upward revision of the targets. On the other hand, the communications of the Ministry to the State Governments reveal the anxiety on the part of the Ministry to keep up the tempo of sterilisation in the States. This will be evident from the following communications from Smt. Serla Grewal to the Health Departments of the States :—

(a) In her d.o. letter No. 15-38/76-PA, dated December 20, 1976 to Health Commissioner, U.P., it has been mentioned, *inter alia*, that :—

“(1) The daily average of sterilisation cases had gone down as compared to previous months. A watch should be kept to ensure that after the sowing and harvesting work is over the daily average goes up....”

In another note relating to her visit to Uttar Pradesh in September 1976, Mrs. Serla Grewal has mentioned :—

“...Targets have been given separately to District Collectors and separately to Chief Medical Officers. At this rate of progress, there is expectation of about 12 lakh more sterilisations by the end of March 1977....

....One healthy trend is that tubectomy operations are also declining while the

vasectomy operations are on the increase. Vasectomies are 5 times that of tubectomies. This is one reason despite the poor infrastructure in U.P. with regard to sterilisations, the programme has caught up. By the end of this month, there is every likelihood of the State achieving the target fixed for it for whole year....”

(b) In her tour report relating to her visit to Bihar on 5th and 6th September, 1976, she has mentioned :—

“...Joint Secretary said that if adjoining State like U.P. can perform 1.2 lakhs of sterilisations in one month, why can't Bihar come up to it?.....”

(c) Smt. Grewal's tour report dated December 30, 1976 on her visit to Bhopal, which was seen by the Health Secretary and the Health Minister is also relevant and an extract thereof is given below :—

“...It may be mentioned that Madhya Pradesh has already crossed 8 lakhs in sterilisation and the Chief Minister emphatically told me that there will be no difficulty in reaching the target of 12 lakhs by March 31. He also took great pride in mentioning to me that in his State there was not a single instance of force being used.... The manner in which the work has been done this year leaves one in no doubt that in case the same tempo continues and the drive remains sustained at the political as well as administrative levels, there would be no doubt that Madhya Pradesh will reach the targets it has assigned for itself for 1977-78 and 1978-79.... The infrastructure of the State is very poor so far as Health and Family Planning services are concerned and despite that, the State has done very well. To maintain this, there is a very great need for strengthening the services for which I emphasised the State Government to take immediate steps to avail all the facilities which the Government of India are providing to the States so that it should come up at par with other States in this respect....”

21.16 It is seen from these communications that the Ministry of Health recognised the upward revision of targets by the State Governments in as much as the directions and observations of the Health Ministry to the State Governments were with reference to the revised targets of sterilisation fixed by the States.

21.17 The undesirability of upward revision of targets by the State Governments was mentioned in the report of Intelligence Bureau entitled “Family Planning Programme—An Assessment” dated September 24, 1976 which was brought out in the wake of reports about resistance to family planning in some States. The relevant extract of this report is given below :—

“...While the family planning campaign is proceeding smoothly in most States,

certain hostile reactions have come to notice in some, particularly U.P. and to a lesser extent in Bihar, West Bengal and Maharashtra. An analysis of the various factors leading to hostile reactions, which had sometimes resulted in breaches of law and order, shows that the governmental agencies as well as the obscurantist and communal elements were responsible for them. One of the important reasons which has led to adverse reactions is the fixation of high targets by certain States in vast disproportion to those fixed by Government of India. For example, U.P. Government has raised the target of sterilisation from 4 lakhs, which was fixed by Government of India to 15 lakhs for the year 1976-77 and West Bengal from 3.25 lakhs to 10 lakhs. The short time available for realising the target and the vast gap between the figures already achieved and yet to be achieved have led to certain administrative steps resulting in undesirable and in some instances disastrous consequences.... Government of India may, therefore, consider the advisability of prescribing a certain permissible percentage beyond the fixed target for each category of family planning programme (Sterilisation/IUD insertions/other methods) so that the State Governments need not be tempted to aim at unattainable target figures by resorting to unhealthy practices....."

21.18 This report was sent to the Ministry of Health and Family Planning, and, on examination, Shri Gian Prakash recorded the following note in file No. 12013/3/77-PLY :—

"Minister may like to see the note received from the Intelligence Bureau on the 'Family Planning Programme—An Assessment', placed below.... In order to discuss the problems raised in the note of the Intelligence Bureau and take remedial action, I suggest that Minister may kindly take a meeting of the Home Secretary, Information and Broadcasting Secretary and the Director, Intelligence Bureau. He may kindly give a date.

Sd/- Gian Prakash
October 4, 1976.

We may meet informally on Wednesday 20th October at 10.30 a.m.

Sd/- Dr. Karan Singh
5-10-1976."

21.19 But no meeting as proposed was held on October 20, nor is any record of such meeting available in the Ministry of Health and Family Planning. No official communication was issued from the Ministry of Health and Family Planning to the State Governments in regard to revision of targets
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on the basis of this report. In his letter dated October 11, 1976 to the State Chief Ministers, Dr. Karan Singh had, in fact, congratulated them on the very satisfactory achievements on the family planning front and asked them to ensure that only eligible persons were motivated and particular attention was paid to post-operative care of the acceptors.

21.20 Examination of the records of the Ministry of Health and Family Planning further reveals that the Ministry not only chose to give the State Governments a free hand in the matter of setting up higher targets for themselves but also complimented the State Governments which exceeded their original allocated targets by wide margin. In support of this, an extract from d.o. letter No. U. 12019/1/77-MEM dated January 4, 1977 of Smt. Serla Grewal to the State Chief Secretaries is reproduced below :—

"It may not be much of an exaggeration to say that 1976 was the year of Family Planning in India. Thanks to the direction, encouragement and support which we received from our worthy Ministers and the cooperation of the people, we were able to break new ground right in the beginning of the calendar year. Later, in April, when the National Population Policy was announced, the programme gathered greater force and the performance graph has ever since been moving upwards. Most of the States have overreached the targets that were fixed for them; in the case of some, the performance has been more than 200 per cent of the goals assigned. All this shows that people by and large are willing to accept the programme...."

Similarly, a box item published in December 1976 issue of the Ministry's publication "Centre Calling" also highlights the achievements in the family planning programme as under :—

"NEW DIMENSIONS—The programme performance during the current year has touched new dimensions. Never in the history of the family planning programme have the States achieved the national sterilisation targets manifold. It ranges from 400 per cent to more than 100 per cent in an over-whelming majority of the States and that too in eight months"

21.21 While identifying the factors responsible for giving a boost to the implementation of the family planning programme in the States, Shri Gian Prakash the then Health Secretary in his detailed note of March 24, 1977, mentioned as under :—

".... It was, however, nowhere suggested that there should be any coercion or force used in the promotion of family planning programme because it was felt that tactics of this kind would be counter-productive....."

21.22 However, in their reply to the Commission's questionnaire on Family Planning, the Government

of Bihar have given the following version of the Health Ministry's role in activating the family planning programme in Bihar :—

"....Shri Gian Prakash, the then Secretary in the Union Ministry of Health and Family Planning and Mrs. Serla Grewal Commissioner, Family Planning visited Bihar in mid January, 1976. They did some plain talking to the senior officers of the Health Department and also to the Chief Medical Officers. The meeting addressed by them is still remembered as the most unpleasant meeting held at the State level. It is said that the Secretary, Union Ministry of Health took to task the CMOs whose performance was not upto the mark. He went so far as to say that the poor performance in family planning amounted to a criminal and anti-national act. The import of the words during emergency conditions could not have been lost on all concerned who attended the meeting...."

21.23 Shri Gian Prakash has described his tour to Bihar on 16th and 17th January, 1976 in his tour report as under :—

"I paid a visit to Bihar on the 16th and 17th January, 1976..... I had a long meeting with the Health Minister. I apprised him of the poor performance of Bihar in the matter of family planning and other health services. Bihar is carrying over 400 vacancies of doctors at various levels in the PHCs and Urban Family Planning Centres. There are also a large number of vacancies in the ANMs and LHV's. Immunisation and MCH services are ill-organised with the result that it is adversely affecting the family planning programme. The doctors, para-medical workers and FP Health Assistants and others connected with family planning are not taking any interest whatsoever. The Health Minister assured me that they proposed to take drastic action against doctors and other para-medical workers not improving their performance and that they have already served notices on bad heads.... On my return to Patna, I had a long meeting with the Chief Medical Officers of the Districts as well as other senior officers of the Department of Health and Family Planning and discussed with them various problems. I have also warned them that in case the performance does not improve, the Government of India would be constrained to cut down the assistance that is being made available to the State for family planning programme. I was assured by the Director of Health Services, Dr. Jha and the Commissioner and Secretary for Health and Family Planning Shri Nathen that they would improve their performance and would take effective action against the staff not showing interest in family planning and other services...."

Copies of the above tour report were also sent to the Cabinet Secretary and Secretary to the Prime Minister.

21.24 As regards the effect that the visit of Shri Gian Prakash the then Health Secretary to Bihar and his tour report had on the family planning programme in Bihar, the State Government in its reply to the Commission has mentioned as under :—

"...Perhaps the political executive of the State too had been pulled up by the Central Authority round about the time when the Congress Session was held at Chandigarh. It was learnt that the Secretary, Ministry of Health after his visit in January 1976 had submitted a very damaging report about family planning in Bihar to the Cabinet Secretary. The then Bihar Minister (Health), Shri B. P. Dubey took up himself to energise the Health Department machinery for the task of achievement of the target after the Chandigarh Session. He personally undertook whirlwind tours of Districts where CMOs of the Districts whose performance was not satisfactory were pulled up publicly by him and in Districts where performance was satisfactory, they were rewarded or commended...."

Incentives and Disincentives

21.25 That the approach of the Ministry of Health and Family Planning was to bring pressure to bear on the people to accept family planning through incentives and disincentives is brought out in the following extracts from a note dated March 5, 1976 submitted by that Ministry for the consideration of the Cabinet :—

"....The approach of the Central Government in regard to the family planning programme so far has been that it is a purely voluntary programme. However, the present demographic situation justifies the introduction of stronger measures of State action for the adoption of fertility control by the people. Short of legal compulsion, a judicious package of incentive and disincentive measures is called for...."

21.26 The package of such measures of incentives and disincentives was not fully spelt out by the Ministry of Health and Family Planning. The States were given freedom of action to adopt such measures as may be seen from the following extracts from the National Population Policy announced on April 16, 1976 :—

"Some States have also introduced a series of measures directed towards their employees and other citizens in the matter of preferential allotment of houses, loans etc., for those who have accepted family planning. In this sphere also, we have decided to leave to each individual State to introduce such measures as they consider necessary and desirable...."

21.27 A number of State Governments and Union Territories Administrations introduced schemes of incentives and disincentives to promote the small family norm among the public and their own employees. This important aspect of the programme was left completely to the discretion of the State Governments, and there was no uniformity of approach in regard to the adoption of the various measures by the State Governments. In fact, there was a divergence of approach even in regard to the small family norm concept itself. While the schemes of some States such as Bihar, Madhya Pradesh, Rajasthan, contemplated limitation of family after three children, those of some others like Andhra Pradesh, Haryana, Himachal Pradesh, provided for limiting the family after two children. Even though the Central Government itself adopted the three children norm of family for its own employees *vide* Notification dated September 4, 1976, the Kendriya Vidyalaya Sangathan, an organisation under the Central Government adopted a more stringent family norm when it issued the following instructions to all Principals, Kendriya Vidyalayas on October 19, 1976 for strict compliance :—

“Children of parents who have two or more children and have not undergone sterilisation of either parent should not be entitled to seek admission in Kendriya Vidyalayas.”

There were also wide variations in the definition of a person eligible for sterilisation in the States and Union Territories. While some States provided for the upper age limit for eligibility of a male for sterilisation in others no age limit was prescribed for this purpose.

21.28 Similarly, the State Governments differed widely with each other in regard to the time factor required for enforcement of the measures pertaining to disincentives. While the Central Government itself provided for a clear time lag of 10 months before the disincentives became operative against the public servants under the Central Government, some of the State Governments and Union Territories brought the measures pertaining to disincentives in force with immediate effect. The Union Territory of Delhi witnessed a peculiar situation in which the Government servants were treated differently depending upon whether they belonged to Delhi Administration or the Central Government. Delhi Administration employees were required to adopt two children family norm and the disincentives were brought in force with immediate effect whereas the Central Government employees living in Delhi itself were required to adopt three children family norm and disincentives were to come into force 10 months after the notification.

21.29 The Central Government's stand on this subject is contained in the following answer given by the Deputy Minister of Health and Family Planning to Lok Sabha Unstarred Question No. 343 on August 12, 1976 :—

“(a)

(b) The State Governments/UTs have devised their own schemes of disincentives which

are broadly in the shape of denial of certain privileges and concessions like maternity leave, loans/and advances for different purposes, allotment of accommodation/land, free medical treatment, freeships/education allowance for children and employment opportunities to those Government servants and members of the general public, as the case may be, who do not limit their family to a prescribed number of children or fail to undergo sterilisation.

(c) According to the National population policy announced on 16th April 1976, a copy of which was laid on the Table of the Lok Sabha, it has been decided to leave it to each individual State to introduce such measures towards their employees and other citizens in the matter of preferential allotment of houses, loans etc., as they considered necessary and desirable. The measures adopted by the State Governments are broadly in keeping with the spirit and intention of National population policy.

(d)

21.30 Examination of the records of the Ministry of Health and Family Welfare reveals that attention of the Ministry was drawn by the Prime Minister's Secy. to measures against non-acceptors of Family Planning Programme adopted by the Government of Himachal Pradesh. The measures which were described as rather harsh by the then Prime Minister were spelt out in the fortnightly letter dated November 2, 1976 from the Governor of Himachal Pradesh to the President of India, relevant extracts from which are reproduced below :—

“In addition to the package of incentives and disincentives, the State Govt. have decided to make family planning obligatory for all Govt. employees. A Govt. servant having two children of different sexes would be considered an ‘eligible person’..... The State Government has also approved ‘The Himachal Pradesh Government Servants (Special Provisions relating to Family Planning) Rules’ incorporating the incentives and disincentives announced by the Government in this regard. Under these rules, an ‘eligible person’ who fails to get himself or his spouse sterilised within three months from the commencement of these rules, will be disqualified in respect of the following : (a) earning of annual increment or crossing efficiency bar ; (b) confirmation and promotion ; (c) medical reimbursement or treatment at Govt. Hospitals ; (d) allotment of Govt. accommodation. In case a person is already residing in a Govt. accommodation, he will be required to pay the market rent or six-times the standard rent whichever is higher ; (e) Govt. loans including GPF advances ; and (f) maternity leave in the case of women employees.”

21.31 The remarks of the Prime Minister on the above letter were conveyed to the Ministry vide a note dated November 10, 1976 as under :—

“.... The Prime Minister has remarked that the Family Planning Rules seem to be rather harsh; we should get information from all States and try to have a more reasonable attitude.

This may kindly be brought to the attention of the Minister of Health and Family Planning.

Sd. N. S. Sreeraman
Private Secretary to the Prime Minister.”

On this reference, the following notings were made in the Department of Family Planning file :—

“Minister may kindly see. Each State seems to be issuing orders according to their own thinking with the results that there is no uniformity. It may be advisable for Secretary to address the Chief Secretaries about the advisability of adopting the Central Government rules in the subject.

Sd. Ajoy Bagchi
11-11-1976.”

“Minister would like to discuss it with Secretary.

Sd. Ajoy Bagchi
11-11-1976.”

Secretary

“Spoken to Minister. We may consolidate the information from the States.

Sd. Gian Prakash
17-11-1976

Sd. Karan Singh
17-11-1976.”

21.32 Variations in the schemes of incentives/disincentives adopted by the State Governments and review thereof in the Ministry of Health and Family Planning, have been clarified in a note furnished to the Commission by the Ministry of Health and Family Welfare, Government of India, relevant extract of which is reproduced below :—

“.... No effort had been made by the Central Government to impose any uniform pattern on the States as the conditions in the States varied to a very large extent. Obviously, there was no occasion to review the scheme of incentives and disincentives adopted by the different State Governments before the Central Government had finalised its own scheme in respect of Central Government employees. Once the Central Government had finalised the scheme

and adopted it, it was circulated to the States and in these instructions it was also mentioned that ‘the States/UTs and public sector undertakings may consider adopting similar measures in respect of their employees’... It will be seen that the note from P.M.’s Secretariat regarding the harshness of Himachal Pradesh disincentives was received approximately around the same time when the Central Govt. scheme of disincentives was finalised and adopted. The question of reviewing the disincentive schemes of the States was specifically taken up on receipt of the P.M.’s note.....”

21.33 Even as information about the varying schemes of incentives/disincentives was being collected from the States/Union Territories, the Ministry of Health and Family Planning received a note dated February 18, 1977 from the Prime Minister’s Sectt. directing that all disincentives which linked sterilisation to the availability of normal facilities should be reviewed and withdrawn. Examination of the file of the P.M.’s Sectt. from which the above said note dated February 18, 1977 was issued reveals that the withdrawal of certain disincentives was ordered after the declaration of Lok Sabha Elections of 1977. The following note from the above file duly approved by Smt. Indira Gandhi, former PM supports this contention :—

“It has been categorically stated that there can be and will be no compulsion in the family planning movement. We are receiving letters that unless the orders issued by several Govts./Public agencies making sterilisation a condition for availing facilities in the case of those with two or more children, are withdrawn immediately, people will not believe the announcements/manifesto.

The schemes of incentives and disincentives have to continue. But, in their over enthusiasm, several administrations pushed the disincentive part to the point of compulsion. To cite only one example, while Kendriya Vidyalaya Sangathan could have said that admission will, in future, not be given to the 3rd or 4th child onwards, they went to the extent of laying down that if a person has two children or more, none of his children will be given admission, unless he produced a sterilisation certificate—thus making it compulsory for this purpose. Non-issue of driving licences excepting on production of sterilisation certificate is another example.

It is submitted that to be in consonance with the policy decision, and to counter propaganda regarding credibility etc., the following may be done and announced immediately :—

- (i) the Maharashtra Bill pending with Government of India may be returned to the State Government; and

- (ii) all administrative units may be advised to immediately withdraw those instructions/orders which make sterilisation a condition precedent for availing of any facilities etc.

Sd/- V. Ramachandran

JS-1

17-2-1977

Secy.

Sd/- P. N. Dhar

17-2-1977

P.M.

Yes.

Sd/- Indira Gandhi

17-2-1977."

21.34 The disincentives which had earlier been declared to be "broadly in keeping with the spirit and intention of the National Population policy" on the floor of the Lok Sabha were now sought to be hastily withdrawn by the Ministry of Health & Family Planning who addressed the State Government to this effect. The withdrawal of disincentives in this manner drew a sharp reaction in the following words of Chief Secretary of Rajasthan contained in his d.o. letter dated February 23, 1977 to Smt. Serla Grewal :—

"... You will appreciate that in spite of decades of family planning programme in India, except among the educated classes who were conscious about the economic benefits of a small family, there was total lack of realisation of the relationship between family planning and economic betterment. It was, therefore, rightly decided that the admissibility of a large number of economic benefits given by Government like free education, free medical aid, allotment of agriculture land free of cost, loans at low interest rates, employment under Government etc., would be conditional upon a person, in the reproductive age, having adopted the national policy of family planning, in the form of either not having any children for last 10 years, or either spouse being sterilised.

These disincentives, if continued for some years, would have brought about a realisation of relationship between family size and economic betterment.

Unfortunately, the target, oriented approach led to disregard for age old sentiments and created strong antagonism among some people. In Rajasthan, this was much less than elsewhere. The desire to soothe this antagonism has now panicked us into cancelling all orders, rules etc. under which the disincentives were prescribed. I am personally sorry

that this has happened, because many years ago I tried to convince Government about adoption of economic disincentives without which, I felt, family planning programme would not succeed. However, the changed policy of Government is being implemented.

(I only hope the Red Triangle Symbol will not have to be replaced by an "Open Gate" Symbol !)".

The Government of Bihar had got so panicky as to order total stoppage of sterilisation work in the State, through a Wireless Message dated February 27, 1977. Giving his impression of the effect of this order, the Additional Secretary, Department of Health recorded the following note in File No. N. 23011/10/77-PLY :—

"I was told in Bihar that their Government have issued instructions to stop all family planning (sterilisation) work even to volunteers at Static hospitals and dispensaries. I saw in Ranchi at the Duranda MCH Centre and in the District Hospital a large number of lady volunteers but they had to be refused because of the Government instructions. The local medical officers were themselves rather confused with this instruction.

I am bringing this to your notice for necessary action, as deemed fit.

Sd/- J. S. Bali

Additional Secretary

5-3-77"

On this, Shri Gian Prakash, noted as follows :—

"I spoke to Shri Khanna, Chief Secretary, Bihar. He told me that earlier it had been decided to perform sterilisation operations on those volunteers who visited the hospitals. Later, however, on account of political reasons, it was decided by the Chief Minister, Bihar to suspend work in connection with sterilisations altogether till such time as the elections are over.

After AS(H) has seen, AS(FP) may see.

Sd/- Gian Prakash

March 7, 1977"

Legislation providing for compulsory sterilisation :

21.35 Paragraph 15 of the National Population Policy statement of April 16, 1976 reads as under :—

"The question of compulsory sterilisation has been the subject of lively public debate over the last few months. It is clear that public opinion is now ready to accept much more stringent measures for family planning than before. However, the administrative and medical infrastructure in

many parts of the country is still not adequate to cope with the vast implications of nation-wide compulsory sterilisation. We do not, therefore, intend to bring in Central legislation for this purpose, at least for the time being. Some States feel that the facilities available with them are adequate to meet the requirements of compulsory sterilisation. We are of the view that where a State legislature, in the exercise of its own powers, decides that the time is ripe and it is necessary to pass legislation for compulsory sterilisation, it may do so. Our advice to the States in such cases will be to bring in the limitation after three children, and to make it uniformly applicable to all Indian citizens resident in that State without distinction of caste, creed or community."

21.36 The State Governments of Maharashtra, Punjab, Haryana and Uttar Pradesh accordingly formulated legislative proposals in this regard. In Maharashtra, "The Maharashtra Compulsory Sterilisation Bill, 1976" was introduced in the State Legislature sometime in March 1976 and was passed in July 1976 after a Joint Committee of the Maharashtra Legislature had considered the views of the public and also conducted a survey to ascertain if sufficient facilities were available to cope with the work of compulsory sterilisation of persons having 3 or more children. The title of the Bill was changed by the Joint Committee to "Maharashtra Family (Restriction on Size) Bill, 1976". The Bill was referred by the State Government to the Government of India, Ministry of Home Affairs, for the assent of the President on August 6, 1976. At the Centre, the Ministry of Home Affairs and the Ministry of Health and Family Planning subjected the Bill to a detailed and critical scrutiny mainly from the point of view of feasibility, reasonableness and repercussions on law and order. The Ministry of Health and Family Planning deputed a team of experts to examine the adequacy of infrastructure in Maharashtra to enforce compulsory sterilisation and on an analysis of the Expert Team's Report, it was felt that the State of Maharashtra had the infrastructure to enforce the Bill provided the provisions relating to compulsory medical termination of pregnancy were deleted from the Bill. Another suggestion by the Ministry to the State Government was in regard to a provision that an eligible person having three or more children would be exempted from compulsory sterilisation if he gave an undertaking not to add further to his family so as to make the Bill less rigorous and easy to administer. Ministry of Home Affairs also expressed themselves in favour of the assent of the President being accorded to the Bill. An extract from O.M. dated November 2, 1976 from the Ministry of Home Affairs to the Ministry of Health and Family Planning containing the views of the Ministry of Home Affairs on this subject is reproduced below :—

"A detailed assessment of the law and order situation in the country has since been made and after considering all the

aspects, this Ministry is of the view that there should be no objection to the enactment of the Maharashtra Family Planning (Restriction on Size) Bill, 1976. Considerable imagination, foresight and tact would, of course, be needed in the implementation of the Act. The pace should not be so slow as would make it a dead letter; nor should it be so fast as would lead to the generation of organised resistance over large areas. It would also have to be stressed upon the Maharashtra Government to ensure that the proper infrastructure exists and that the efforts for educating and motivating the people are not relaxed in any manner. Further, it would be necessary to issue executive instructions for proper enforcement of the Act in a manner that it does not lead to law and order problems or engender widespread disaffection in the community. It would be better to advise the Maharashtra Government to work out and lay down detailed guidelines for proper enforcement of the Act."

Finally, the Department of Family Planning submitted a note on December 3, 1976 for discussion in the Cabinet meeting incorporating the views of the concerned Ministries including Ministry of Law, Department of Social Welfare and Planning Commission. It is seen from the relevant file that the item relating to Maharashtra Family (Restriction on Size) Bill, 1976 was included as item number one on the agenda of the meeting of the Cabinet held on December 8, 1976. However, the file reveals that the Bill did not come up for discussion in the Cabinet meeting because the item was withdrawn. The Cabinet Secretariat informed the Home Ministry that the Bill was not likely to come up for discussion in the Cabinet in the near future. Subsequently, on the instruction of the Prime Minister conveyed to the then Health Secretary *vide* PM's Secretariat Note dated February 18, 1977, the Ministry of Home Affairs was informed by Smt. Serla Grewal, as follows :—

"... Since it is the policy of the Government that there can be and will be no compulsion in the matter of family planning, I am directed to request to return the Maharashtra Family (Restriction on Size) Bill, 1976 to the State Government to revise it in consonance with the policy decision."

This was examined in the Ministry of Home Affairs in consultation with the Ministry of Law and it was decided to withhold the assent of the President to the Bill and the State Government was accordingly informed.

21.37 The State Legislation providing for compulsory sterilisation was in full accord with the National Population Policy and the Ministries of Health and Home in the Government of India had recommended that the assent of the President should be accorded to the Maharashtra Bill. Also, the Cabinet

in its meeting held on March 24, 1976 had decided, *inter alia*, that President's assent to the undertaking of legislation for compulsory sterilisation could be given to States which are satisfied that the time is ripe and necessary infrastructure exists. However, the Maharashtra Bill was not even placed before the Cabinet for discussion and the President's assent to the Bill was finally withheld on instructions from the Prime Minister.

Role of Mass Media

21.38 The National Population Policy provided for development of a new multi-media motivational strategy to utilise all the media channels including the radio, television, the press, films etc., for spreading the message of family planning. While steps were taken at the level of the Minister of Information and Broadcasting to organise a multi-media campaign, efforts were made to organise public support for the family planning programme through the press. In his D.O. letter dated May 4, 1976, Shri S. M. H. Burney, Secretary, Ministry of Information and Broadcasting, wrote to Dr. A. R. Baji, Principal Information Officer, as under :—

"My Dear Dr. Baji,

Please organise and see that a number of letters to editor in various English, Urdu and language newspapers appear in regard to support for the family planning programme. I mentioned this to you yesterday."

On the other hand, family planning programme was included in the list of subjects of pre-censorship *vide* orders dated September 2, 1976 issued under Rule 48(1) of DISIR.

Implementation of the Family Planning Programme by the State Governments

21.39 As family planning was not specifically included in the Prime Minister's 20-point programme announced in July 1975, the Ministry of Health and Family Planning sought the approval of the Cabinet, *inter alia*, to the following proposal in a note dated March 5, 1976 :—

"(8) Family Planning be included as the 21st point of the development programme."

The Cabinet which considered this proposal at its meeting held on March 24, 1976, however, decided that this was not necessary.

21.40 Shri Sanjay Gandhi who was then connected with the Youth Congress had announced his 4-point action programme sometime in February 1976 in which family planning was also included. Even though the Cabinet did not agree to include family planning in the 20-point programme, the 4-point programme of Shri Sanjay Gandhi was sought to be referred to the Congress ruled State Governments

for implementation. This is clear from the following extracts from the letter dated July 23, 1976 of Shri D. K. Barooah, the President, All India Congress Committee, to the Chief Minister, Himachal Pradesh :—

".....Keeping this aspect in view, in my concluding remarks in the last AICC meeting held on May 29 and 30, 1976 in Delhi. I had called upon our partymen to adopt the 4-point programme of the Youth Congress alongwith the 20-point programme....These 4-points are (1) Family Planning, (2) Plantation of trees, (3) Eradication of illiteracy, and (4) Abolition of dowry system and eradication of caste system.

"I am sure, the Pradesh Congress Committee and State Governments have already taken necessary steps for implementing the 4-point programme alongwith the 20-point economic programme. I again impress upon you that all the programmes should be taken up together....."

Since about the time the above circular went round, some Congress Chief Ministers and senior officials serving under them made speeches and gave instructions connecting family planning with Shri Sanjay Gandhi or his 4-point programme which later on became the 5-point programme.

21.41 In August 1976, issue of 'Centre Calling', a publication of the Department of Family Planning, a special report by Shri P. S. Mehta under the heading "Uttar Pradesh Breaks New Ground" was published. Relevant extracts from the report are given below :—

"The State started making a big thrust forward after the declaration of the national emergency. It evolved a charter of progress under the 20-point economic programme and the 4-point crash programme of the Youth leader Shri Sanjay Gandhi. The State leadership has resolved to achieve the goals under these schemes within the scheduled time...."

21.42 In the record of proceedings of the meeting of Commissioners, Dy. Commissioners and Civil Surgeons held on August 24, 1976 under the Chairmanship of the then Chief Minister, Punjab, it is mentioned that :—

"Family Planning is one of the items in the 25-point socio-economic programme.... The Chief Minister desired that for a social programme like family planning persuasion should play a vital role, but there should not be any hesitation in bringing about pressure where necessary as the family planning programme is in the interest of the State and the nation...In the end,

Chief Minister assured full support to the officers, who will work for the achievement of the family planning targets assigned to them and emphasised that the family planning programme should be given top priority being one of the 25-points in the socio-economic programme."

21.43 The Joint Director, Family Planning, Government of Maharashtra addressed a D.O. letter dated September 30, 1976 to various officers in the Districts stating that :—

"I wish to inform you that Shri Sanjay Gandhi is visiting Maharashtra State about October 28, 1976 and the Chief Minister desires that before the visit of Shri Sanjay Gandhi, Maharashtra State must have completed 5 lakhs sterilisations. You will appreciate the seriousness with which the Chief Minister has issued instructions and, therefore, though the task is stupendous, we shall have to leave no stone unturned to achieve this objective....."

21.44 The Chief Minister of Himachal Pradesh while reviewing the implementation of the family planning programme made a specific reference to the 5-point programme of Shri Sanjay Gandhi as may be seen from the following extract from a Press Note dated December 20, 1976 issued by the State Government :—

"....The State had achieved over 70% of the enhanced target of one lakh sterilisations so far. Emphasising the urgent and emergent need of small family norm, Dr. Parmar said that the programme picked up particularly after enunciation of 20-point economic programme of our dynamic and farsighted Prime Minister Smt. Indira Gandhi and 5-point programme of Shri Sanjay Gandhi...."

21.45 Shri A. L. Nair, Secretary, Health & Family Planning Department, Government of Orissa spoke of the services rendered by Shri Sanjay Gandhi in the field of family planning as under in his letter dated January 17, 1977 to all Collectors and Chief Medical Officers of the State :—

"....I am happy to inform you that Shri Sanjay Gandhi, our national youth leader will be visiting Orissa on the 29th and 30th instant. As we are all aware, a dynamic impetus has been given by him and has continued unabated throughout the country to fulfil speedily the objectives of the national population policy enunciated in April, 1976. Our State Government have, therefore, decided that, as a token of recognition of his services in this highly important field, we should observe a Special Family Planning Month, throughout the State, with effect from 29th instant...."

21.46 The Cabinet decided at its meeting on March 24, 1976 that it was not necessary to make family planning the 21st point of the development programme. There is nothing to show that subsequently, the 5-point programme which included family planning was adopted by the Government of India in the Ministry of Health & Family Planning. It, however, appears that Smt. Indira Gandhi, the Prime Minister had publicly commended the 5-point programme as may be seen from the following extracts from an article titled "The 20-point and 5-point programmes" by Shri Shankar Ghose, Union Minister of State for Planning which was released to the press by the PIB :—

"....The 5-point programme announced by Shri Sanjay Gandhi which has generated tremendous enthusiasm, comprises a massive movement for family planning... This programme is supplementary to the 20-point programme announced by the leader of the nation Smt. Indira Gandhi and, in fact, she declared at the AICC Session at Gauhati, in November 1976 that the 5-point programme was "really basic to the success of the other programmes....."

As desired by the Prime Minister, Smt. Indira Gandhi a conference of Chief Ministers/Governors of States under President's rule was convened on January 18, 1977 to evaluate the positive gains under the 25-point programme. In that meeting family planning was discussed as one of the points of the 5-point programme as adopted alongwith the 20-point programme.

Coercive measures devised by State Governments

21.47 According to information furnished by the Ministry of Health & Family Welfare to the Commission, the performance graph touched 2.67 million sterilisations in 1975-76 and rose to the peak level of 8.1 million in 1976-77. Whereas 10 States and 4 Union Territories had exceeded the targets in 1975-76, 18 States and 5 Union Territories exceeded the targets in 1976-77. The upsurge in the performance has been attributed by the Ministry to, *inter alia*, the importance given to the Family Planning Programme under the 5-point programme of Shri Sanjay Gandhi and the resultant marked increase in the commitment for the programme at political levels. In States/Union Territories such as Uttar Pradesh, Bihar, Haryana, Delhi all departments were intimately involved in the Family Planning Programme and specific targets were allotted to each of them. A glimpse of the coercive methods employed by some of the State Governments for achieving the sterilisation targets may be had from the following illustrative samples :—

- (a) Rule 11 of the Uttar Pradesh Government Servants (Special Provisions relating to Family Planning) Rules, 1976 notified on July 2, 1976 provided that:—

"It shall be part of the duties of every Government servant to periodically motivate such member of eligi-

ble persons to get themselves sterilised and to perform such other work in pursuance of the family planning programme as may, from time to time, be directed by the State Government, failing which the payment of his salary and allowances or his annual increments or both shall be liable to be stopped for such time and subject to such conditions as the State Government may from time to time by general and special order direct."

The Chief Secretary to the Government of Uttar Pradesh issued the following crash wireless message on July 7, 1976 to all the District Magistrates and the Divisional Commissioners as part of the drive to achieve the target :—

"GOVERNMENT ATTACH HIGHEST IMPORTANCE TO ACHIEVEMENT OF FAMILY PLANNING TARGETS(.) PRESUME YOU HAVE ALREADY FIXED TARGETS FOR EACH DISTRICT AND DIVISIONAL LEVEL OFFICER (.) INFORM EVERYBODY THAT FAILURE TO ACHIEVE MONTHLY TARGETS WILL NOT ONLY RESULT IN STOPPAGE OF SALARY BUT ALSO SUSPENSION AND SEVEREST PENALTIES (.) GALVANISE ENTIRE ADMINISTRATIVE MACHINERY INTO ACTION FORTHWITH REPEAT FORTHWITH AND CONTINUE TO REPORT DAILY PROGRESS BY CRASH WIRELESS TO ME AND SECRETARY TO CHIEF MINISTER(.)—FIGURES UNDER EACH HEAD SHOULD INDICATE DAILY ACHIEVEMENT FIRST AND CUMULATIVE ACHIEVEMENT NEXT (.)"

- (b) In order to impress upon the Divisional Commissioners and District Magistrates in Bihar, the need for strong measures to achieve sterilisation targets, the Health, Commissioner, Government of Bihar wrote to them as under on 12-8-76 :—

"....The State Government take a serious view of the non-fulfilment of sterilisation targets prescribed for the subordinate field staff of the various Departments. Some of the districts have prescribed cards for all categories of field staff who have been given family planning targets in which targets given and progress achieved has to be shown for every month as duly certified by the Medical Officer of the area. The salary/fixed T.A./T.A. of the staff is to be released only after target prescribed is achieved. The same procedure could be adopted in other districts also."

The local authorities resorted to actual stoppage of salary of school teachers in some districts of Bihar. The Education Commissioner issued instructions in his letter dated November 16, 1976 that salaries of school teachers must not be stopped for non-fulfilment of targets. These instructions were not strictly followed with the result that the State Education Department had to get the Chief Secretary to issue specific instructions to the District Officers not to stop the payment of salaries of school teachers vide his letter dated December 18, 1976 followed by a Home Department's wireless message dated January 18, 1977.

- (c) In a letter dated August 28, 1976 to the Financial Commissioner and Heads of Departments of the State Government, the Chief Secretary, Government of Haryana conveyed the decision that "all 'eligible Government Servants' who have not already got themselves sterilised shall get themselves sterilised...by 'due dates' in two phases. In the first phase all eligible Government servants with three or more children are to get sterilised by October 31, 1976 while in the second phase all the remaining eligible Government servants are to get themselves sterilised by December 31, 1976....." Subsequently in his letter dated November 23, 1976, the Chief Secretary Haryana stated that "those eligible Government servants falling in phase I, who do not get themselves sterilised by November 30, 1976 will be liable to punishment under the Punjab Civil Services (Punishment & Appeal) Rules, 1952".

- (d) The following extracts from a letter dated October 15, 1976 from the Deputy Commissioner, Kulu to all Heads of Offices in Kulu District give an idea of the steps taken in Himachal Pradesh to achieve the sterilisation target :—

"You are aware that in the meeting held on 25th of September 1976, the Hon'ble Health Minister of Himachal Pradesh, addressing to the officers of the District in the presence of the Hon'ble Agricultural Minister, Himachal Pradesh, Hon'ble Minister of State for Cooperation Shri Mansa Ram....warned that any Government officers/official in different offices eligible for sterilisation but not undergoing sterilisation operation without any valid reason, will not be tolerated any more, and his pay would be withheld till he gets himself sterilised. We wanted to cover all Govt. employees under family planning campaign in the month of September 1976, but unfortunately we

have been able to achieve only 40% of the target. Even the overall picture of the District is very distressing. In other districts both persuasive and coercive methods have been employed and all officers in the District are completely involved in the family planning campaign. In our District there is apparently no such involvement and most of the officers have remained completely indifferent to the family planning efforts. Now such indifference cannot be brooked and even coercive methods have to be applied in resistant cases...."

- (e) According to the information contained in the Rajasthan Government's reply to the Commission's questionnaire on Family Planning, the following were among the decisions taken at the Regional meetings of Collectors and Supdts. of Police held under the Chairmanship of the Chief Minister at Jaipur, Bikaner, Jodhpur and Udaipur during September, 1976 :—

- "(i) Entries in Annual Confidential Report of the District level officers will be made on the basis of the evaluation of the success in family planning programme in their area;
- (ii) The birth of fourth child to a Govt. servant will be deemed as 'mis-conduct' for which necessary amendment would be made in the rules."

The following extracts from a letter dated September 19, 1976 from the Collector, Churu District to all the officers in the District give an idea of the pressure put on the Government officials for achieving the sterilisation targets :—

"....it is hereby ordered that Government employees who are eligible for sterilisation and who have not yet undergone sterilisation will not be taken on duty from the 1st October, 1976 till they produce a certificate to the effect that they/or their wives has undergone sterilisation.

You are also requested to ensure that all employees and officers of your department achieve 50% of the targets already communicated to you vide this office d.o. letter No. 1680-1753 dated the 20th August, 1976 failing which salary for the month of Sept. 1976 should not be paid to the employees of the offices and they may also not be taken on duty from the 1st October, 1976 till they achieve the targets."

- (f) In Karnataka, the Inspector General of Police issued Circular Memo dated October 12, 1976 to the Addl. IGP(CID), DIsGP, SPs, asking the unit officers to instruct their subordinates to enforce the provisions of the Prevention of Beggary Act, 1975 and to send the beggars to District Hospital and other institutions for sterilisation.

- (g) In reply to the Commission's questionnaire on family planning, the Delhi Administration has stated as under :—

".....Verbal instructions were given particularly in the various meetings taken by the LG & CEC wherein Heads of Departments were exhorted to ensure that all eligible couples got themselves sterilised and if necessary other measures including delay in payment of salaries to the employees be resorted to."

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"Apart from incentives and disincentives given in Circular No. F. 2(16)/SI/M&PH dated 5-5-1976 the following types of pressures were also brought on the Government employees :

1. The Govt. teachers were impressed upon to motivate atleast five cases each.

2. Threats of transfer, suspension and termination of services were held out particularly in respect of Education Deptt., MCD and DDA.....

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.....It is correct that in a number of cases of Govt. servants who did not subscribe to the Governmental policies, notices of termination of service were issued. These were, however, revoked when the concerned officials got themselves sterilised.

In MCD, a number of teachers and other employees were relieved and asked to report to the headquarters for further postings. Those who underwent sterilisation were given the posting orders.

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In respect of the DDA, the allottees of plots in resettlement colonies, applicants for allotment of flats, plots

as well as industrial plots were required to furnish proof of sterilisation before finalisation of allotment and handing over of the plot/flat. Similar restriction was placed in respect of application for change of plot where applicants were asked to bring 20 cases of family planning.

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.....sometimes in June, 1976, oral instructions were given by the EC(F&S) Shri Bahl, that the applications made by the persons who already have two or three children living and had not been sterilised for addition of more children in food card may be kept pending till further instructions are given by him. No instructions were, however, given by him till February 1977 and till then such applications were kept pending with the Deptt. in Feb., 77, Shri Bahl gave oral instructions that these applications be disposed off as per rules without insisting on production of sterilisation certificate as prescribed. The Deptt. acted accordingly....."

According to information furnished by the State Governments and U.T. Administrations instances of one or more of the measures such as non-payment of salaries, withholding of increments, transfer to far off places, suspension and even termination of services had been reported by the Governments of Uttar Pradesh, Haryana, Madhya Pradesh, Maharashtra, Rajasthan, Delhi etc., as among the coercive methods adopted in the course of sterilisation campaign.

21.48 The Commission had circulated a questionnaire to the State Governments/Union Territories Administrations seeking information *inter alia* regarding the number of unmarried persons sterilised and the number of deaths resulting from sterilisation or lack of after care thereof. Information based on the response to the questionnaire is as follows :—

- (a) 548 reports/complaints regarding sterilisation of unmarried persons had been received during the period of emergency, the Statewise break-up being UP (164), Haryana (105), Madhya Pradesh (84), Rajasthan (44), Maharashtra (37), Delhi (32), Bihar (30), Assam (21), Punjab (15), Gujarat (5), West Bengal (5), Himachal Pradesh (3), Orissa (1), Goa, Daman & Diu (1), and Pondichery (1). Relevant information has not been furnished by Tamil Nadu. The remaining States and Union Territories have furnished NIL information.

- (b) Reports/complaints of deaths have been received in 1,774 cases, the break-up being Rajasthan (217), Uttar Pradesh (201), Maharashtra (151), Andhra Pradesh (135), Haryana (132), Madhya Pradesh (132), Karnataka (123), Assam (95), Tamil Nadu (90), Bihar (80), Delhi (78), Gujarat (68), Orissa (68), West Bengal (65), Himachal Pradesh (60), Kerala (40), Punjab (29), J & K (2), Tripura (2), Goa, Daman and Diu (2), Pondicherry (2), Chandigarh (1) and Mizoram (1). The remaining State Governments and Union Territories Adms. have furnished NIL information.

21.49 The methods adopted in some States to achieve the stupendous targets evoked resistance to the family planning programme. This aspect was brought out in the Home Department's note giving an assessment regarding the resistance to Family Planning Programme in Uttar Pradesh furnished to the Ministry of Home Affairs *vide* letter dated November 18, 1976. Relevant extracts from the aforesaid note are reproduced below :—

".....The words family planning and sterilisation have almost become synonymous and therefore in the common parlance when people express their views against the family planning, their opposition is actually against sterilisation. The decision of the State Administration to pursue and implement the national population programme of family planning by undertaking a fixed number of sterilisation operations and fixing quotas for the districts and the departments has generated a sense of apprehension and has evoked opposition from political parties Hindu and Muslim communal organisations and certain organised sections of society. Even those sections which subscribe to the policy and programme of the family planning, have expressed their opposition to use of coercion threat or force in sterilisation, and the manner of execution of the programme....."

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.....Amongst the other, organised sections, Madhyamik Shikshak Sangh (Sharma Faction) in its resolutions and meetings, while extending its cooperation to the family planning programme has strongly assailed the policy of suspension and the withholding of salaries of teachers for failure to achieve the quota. The teachers in general at other places in the State have come to notice criticising their involvement in the family planning. But for the emergency, by now a strong common front would have been formed between them and the students to oppose this

most important programme of the State Administration.....

Summing up it needs to be reiterated that opposition to family planning programme is actually opposition to the policy of sterilisation. The following appear to be some of the reasons for this opposition :—

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(vi) The drastic disincentives seem to have generated an apprehension that instead of appeal, education and persuasion, the Government have adopted the tactics of threats, pressure and coercion. Obviously such measures have not been relished even though they are for their own and nation's ultimate good.

(vii) There are complaints that field agencies adopt various highhanded measures to achieve the target and that the Government machinery is not fully geared to stupendous task it has undertaken. The follow up action concerning sterilised cases needs tangible improvement."

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Attitude of Ministry of Health and Family Planning to allegations of coercion and pressure.

21.50 Dealing with the allegations of coercion and pressure in the implementation of the family planning programme during the emergency and the reaction of the Ministry to such allegations, Shri Gian Prakash, has stated, as under, in his detailed note of March 24, 1977 :—

".....a few incidents of law and order in connection with family planning due to alleged excesses on the part of officials were reported from time to time, particularly from the States of Haryana, U.P., Rajasthan and Bihar. Attention of the Minister was also drawn in Parliament to the withholding of salaries of teachers etc., in Delhi. These were immediately sent to the States concerned asking for reports. In October, Minister of Health and F.P. wrote a letter to the Chief Ministers, congratulating them on the good work done in the field of family planning. He also, however, emphasised, 'I must add, however, that we have received a few reports about ineligible persons being sterilised and coercive methods being employed. I would urge you kindly to ensure that only eligible persons are motivated to undergo sterilisation, and particular attention is paid to post-operative care of the acceptors'.

.....Again in the meeting of the Consultative Committee held on 18-10-76, Minister stated that all cases of coercion brought to notice would be looked into and Minister would write to Health Ministers concerned personally....meetings were organised with the Chief Ministers and Health Ministers of the States concerned with a view to personally impress upon them not to give any chance for complaints and to run the whole programme as a voluntary programme.... As and when complaints were received in the Ministry they were invariably forwarded to the State Governments for enquiry and report....."

21.51 According to the information furnished by the Ministry of Health & Family Welfare, nearly 300 complaints were received during the emergency and these were referred to the concerned State Government/UT Administration for investigation and remedial action. It appears that the general approach of the Central Government in this regard was not to interfere with the freedom of action of the State Government in implementing the family planning programme. One of the instances which brings out this observation has been found on the scrutiny of Ministry of Health and Family Welfare file No. F. 12011/3/76-Poly(P). In this case, the Department of Revenue and Banking brought to the notice of Ministry of Health and Family Planning *vide* their letter dated October 10, 1976 that the District Magistrate, Aligarh (UP) has issued the following instructions to the State Bank of India and Central Bank, Aligarh, with copies endorsed to other nationalised banks for information and similar action :—

"Please note that in connection with the Family Planning Programme all heads of offices have been directed to give the following certificate along with their pay bill for the month of August 1976 to enable them to draw their salaries :

ALL ELIGIBLE CASES FOR STERILISATION IN MY OFFICE/DEPARTMENT HAVE BEEN STERILISED. PERSONS WHO HAVE REFUSED TO GET THEMSELVES STERILISED HAVE NOT BEEN PAID THEIR SALARIES.

Please ensure that the bills/cheques for payments are cleared only if the above certificate is attached to the bill/payment authority concerned. Kindly acknowledge receipt of the above communication.

Sd/-

R. S. MATHUR,
District Magistrate, Aligarh

21-8-1976."

21.52 This was examined in the Ministry and even though at the lower level of processing an exception was taken to the District Magistrate's order as being against the Government policy, the Deputy Secretary (Policy) did not find much substance in the matter and recommended that at best it may be brought to the notice of the State Health Secretary. Smt. Sarla Grewal before whom the file was put up for orders and Shri Gian Prakash, then Union Health Secretary, made the following notations :—

"We may not take any action. The State is competent to do so.

Sd/-

SARLA GREWAL"

11-11

"I have mentioned this to Minister. No action need be taken by us.

Sd/-

GIAN PRAKASH

17-11-76."

21.53 It is further seen that Shri C. Rajeswara Rao, General Secretary, CPI, addressed a letter dated October 20, 1976 to Shri Karan Singh, Health Minister, alleging specific instances of coercion and use of force by authorities in the implementation of the family planning programme in Punjab, Uttar Pradesh, Haryana, Bihar, Rajasthan and Delhi. This letter was written by Shri Rajeswara Rao with reference to the categorical declaration by the Health Minister in the Parliamentary Consultative Committee that coercive methods should not be used at all in family planning. It is seen from the file that on receipt of this letter, Shri Gian Prakash, the then Health Secretary, had discussed the matter with the Health Minister and put up draft letters to the Chief Ministers of the States concerned and the Union Home Minister, along with the draft reply to Shri Rajeswara Rao. However, the file reveals that only a reply was sent to Shri Rajeswara Rao and draft letters to the State Chief Ministers and the Union Home Minister were not issued as the Health Minister desired that only Union Home Secretary may be kept fully informed.

21.54 The Central leaders had recognised the sensitive nature of the family planning programme. In her letter dated May 20, 1976 to the State Chief Ministers, Smt. Indira Gandhi, the then Prime Minister, had stated that carrying the message of family planning, particularly to the rural people and poorer sections required constant effort, study and experiment. She had also suggested that measures that were adopted should be implemented at the

field level with imagination and understanding. Later on, in his letter of October 11, 1976 to the State Chief Ministers, the Union Health Minister had urged the need to motivate only eligible persons and to pay particular attention to post-operative care of the acceptors. Further, in the context of reports of law and order incidents, the Ministry of Home Affairs had also been cautioning the State Governments from time to time. Extracts from one such letter dated October 13, 1976 from the Home Secretary to the Chief Secretaries are given below:—

"In my last letter I had discussed in detail the growing opposition in certain States to the family planning campaign leading to violent incidents. I had also mentioned that an assessment was being conducted of the reactions to family planning in different States. In the meantime, there have been some more violent incidents, particularly in Haryana in connection with this programme. The assessment conducted by us shows that the family planning campaign is proceeding smoothly in most of the States and the hostile reaction is confined to U.P. and Haryana in particular and to a lesser degree to Bihar, West Bengal and Maharashtra. An analysis of the various factors leading to hostile reactions, which had sometime resulted in breaches of law and order, shows that the indiscretion of Government officials as well as propaganda of the obscurantist and communal elements were responsible for them. At some places certain administrative steps had been taken in a desire to achieve the targets quickly which had led to undesirable consequences. Another factor responsible for adverse reactions in the public has been inadequacy of the infrastructure in relation to the targets of sterilisation. The adverse publicity that is generated by a few bad cases hardly needs to be emphasised. The family planning programme in some States has also received a serious setback due to a sense of hostility on the part of sections of Government servants who are, in fact, expected to be the active protagonists and motivators. This has been the result of use of certain coercive methods like stoppage of pay and even termination of service of Government servants on their failure to undergo sterilisation themselves or for motivating a certain number of persons. For instance, a large section of school teachers have become hostile on account of the pressure exerted on them in respect of this programme..."

Shri Uma Shankar Dikshit, Governor of Karnataka, referring to this letter wrote to the Home Secretary on October 20, 1976 that :—

"...Although the Prime Minister has from time to time made public statements in unequivocal language that she does not

favour coercive methods in the implementation of Government's policy for promotion of family planning, the resort to methods which are not in full accord with the Prime Minister's policy announcements has not been given up in some of the States. A fairly clear statement on the lines of the Prime Minister's pronouncements has recently been made by the Central Minister for Health Dr. Karan Singh. However, there seems to be a feeling among the public that despite official pronouncements like that of the Health Minister, some of the State Governments do not think that they should take such policy clarifications too seriously. I am afraid such a feeling would lead to progressive erosion of credibility in announcements of public policy. I would, therefore, like to suggest in all seriousness that in every case where a Govt. official or other agency is found to have committed an excess in their zeal for achieving high targets, with or without the connivance of higher officials or leaders of Government, such erring persons should not only be pulled up, but should be awarded punishments. Publication of such action would, in my opinion, restore confidence and weaken the effect of hostile political or obscurantist propaganda against family planning.

I hope the Home Ministry will give my suggestion their serious consideration."

A copy of the letter from the Governor of Karnataka was sent by the Home Ministry to the then Secretary, Ministry of Health and Family Planning for necessary action. No further action, however, appears to have been taken in this regard by the Ministry of Health and Family Planning.

21.55 In the concluding para of his detailed note of March 24, 1977 which also had the approval of the then Union Health Minister, Dr. Karan Singh, Shri Gian Prakash, the former Health Secretary, has brought out the role of the Health Ministry *vis-a-vis* the excesses committed in the implementation of Family Planning Programme during the period of emergency as under :—

"It is worthwhile mentioning that none, not even Members of the Opposition, have blamed the Ministry of Health and Family Planning for excesses alleged to have been committed in some of the States.

This is because of the fact that the Minister and officers have been at pains to ensure the voluntary nature of the programme. People know where and how the excesses had been committed."

ANDHRA PRADESH

21.56 In Andhra Pradesh, 1,65,163 sterilisation operations were performed during 1975-76 against a target of 2,94,200 set by the Government of India. The performance in 1976-77 was 7,41,713 against a target of 4 lakhs.

21.57 The target of 4 lakhs set for the year 1976-77 was raised by the State Government to 6 lakhs. It was distributed among the 22 Districts. Monthly targets were fixed for each Primary Health Centre (75 cases), District Headquarters and major hospital (200 cases), Taluk hospital (100 cases), Teaching Hospital (300 cases) etc. Each Medical Officer of Primary Health Centre/Urban Family Planning Centre was given a target of 375 cases for 10 months. Similarly, Family Planning staff such as Health Visitors were each given a target of 100 sterilisation cases in 10 months and other staff such as Health Supervisor and Auxiliary Nurse-Midwife etc., were each given 50 cases for 10 months.

It was made clear in a Memorandum dated April 28, 1976 from the Director of Medical and Health Services that the targets given must be achieved under any circumstances and Government would take strict disciplinary action against the defaulters. In another Memorandum dated June 29, 1976, to the District Medical and Health Officers, the Director (M&HS) laid emphasis on achievement of monthly targets in full and desired that persons responsible for shortfall in achievement should be dealt with severely. The Director (M&HS) also wrote to the Inspector General of Police on September 15, 1976 suggesting that "the police personnel may also be requested to motivate 2 to 3 cases each every month". This letter was forwarded by the IG to the Supdts. of Police in the Districts and Unit Officers for necessary action.

21.58 After a mid-year appraisal of performance, the Director (M&HS) wrote to the District Level Officer on October 5, 1976 pointing out that, since only 1 lakh sterilisations had been achieved in the first six months of 1976-77, the officers of the District level should strive hard and achieve 5 lakh sterilisations in the remaining period of six months without fail. He also desired that disciplinary action should be taken against persons responsible for shortfall in achievement.

21.59 The Youth Congress in Andhra Pradesh was sought to be actively associated in the sterilisation campaign. In a letter dated August 19, 1976 to the President/Vice President/Secretary of Youth Congress Committees of various districts, the Director (M&HS) mentioned that the Block representatives of Youth Congress had been given targets to motivate persons having two or more children for sterilisation. He requested the Youth Congress

leaders to organise mass vasectomy camps of the magnitude of 500 to 1000 sterilisation cases in each Panchayat Samiti and offered Government assistance in the form of necessary services for organising such camps. The Chief Minister, Andhra Pradesh, himself wrote to all District Collectors on August 21, 1976 asking them to take full advantage of the co-operation of the Youth Congress in creating the proper atmosphere for persuading the eligible couples to undergo sterilisation operations.

21.60 In the course of the sterilisation campaign, the services of the teaching community were also utilised by the State Government. In a meeting held on June 25, 1976 under the Chairmanship of the Chief Secretary it was decided to involve teachers in Primary and Secondary Schools etc., in motivational work. A target of 1 lakh sterilisations was fixed for motivation through the teachers and lecturers. Each teacher/lecturer was given an annual target of 20 sterilisations.

21.61 Disincentives for Government servants were introduced by the M&H Department's order dated September 27, 1976. A Government servant having more than two children would come under the purview of the disincentive schemes. This was in contrast to the three children family norm adopted by the Central Government and a majority of the State Governments. The disincentives contemplated that Government servants having more than two children would be denied all facilities of loans and advances unless they/their spouses underwent sterilisation operations. Advances from the GPF were, however, excluded from this *vide* a clarificatory Memorandum dated November 26, 1976. The disincentives further contemplated that a Government servant having two or more living children, would not be entitled to travelling allowance, leave travel concession, medical reimbursement, Government educational cash concession and transfer travelling advance in respect of any child born after September 1, 1977.

21.62 The order dated September 27, 1976 also spelt out disincentives for members of the general public. These disincentives stipulated sterilisation in the case of any person having more than two children, as a condition precedent for availing of facilities such as allotment of houses by the Andhra Pradesh Housing Board, and preferential treatment in the matter of grant of house-sites and assignment of agricultural land (these disincentives were withdrawn on March 28, 1977).

21.63 According to the State Government, no instance of any organised resistance to the family planning programme came to notice during the emergency nor was any person arrested for opposing the programme.

21.64 The State Government have informed that 135 cases of death after sterilisation had been reported during the period 1975-77 and that in all cases of death after the operation, *ex gratia* payment was made to the relatives of the deceased.

21.65 According to the information furnished by the State Government, there was no case of sterilisation of an unmarried person during the emergency. The Commission has, however, received complaints in regard to sterilisation of bachelors in Andhra Pradesh during the period of the emergency. Allegations of sterilisation of unmarried persons made in some of the complaints selected for investigation by the Commission through its own investigating officers appear to be correct.

21.66 The State Government have informed the Commission that while 21,562 persons having less than two children were sterilised during the period of emergency, no person of over 55 years of age was sterilised in the State during that period.

ASSAM

21.67 In Assam, 1,47,545 sterilisation operations were performed in 1975-76 against a target of 67,300 set by the Government of India. The performance in 1976-77 was 2,26,205 sterilisation operations against a target of 1,70,000.

21.68 The State's target was distributed among the several Districts and the respective District Health Officers were made responsible for achieving the District targets. Annual targets were fixed for doctors and para-medical staff as also doctors and interneers in medical colleges. Non-medical staff such as District Family Planning Officers, District Extension Educators, Block Extension Educators were each given motivational targets of 1,000 cases per annum; and auxiliary nurse-midwives and family planning field evaluation workers/computors were given annual targets of 300 and 600 cases each respectively. Orders were issued in H&FP Department's letter dated June 30, 1976 for initiating action against some Block Extension Educators (BEE) and District Extension Educators (DEE) for showing extremely poor performance. The letter also contained instructions for issuing warning to DEEs/BEEs whose performance was less than 50 per cent of their allotted targets.

21.69 In reply to the Commission's questionnaire on Family Planning, the State Government have stated that notice was issued for terminating the services of all BEEs and DEEs with effect from June 1, 1976 for not fulfilling the targets; and after reviewing the cases five BEEs were removed from service.

21.70 The Assam Civil Services (Conduct) Rules, 1965 were amended *vide* a Notification dated October 28, 1976 to include a new rule—Rule 26A—that every Government servant should ensure that the number of his children did not exceed three. This, however, was not to apply to a Government servant having more than 3 children as on September 20, 1977 provided the Government servant concerned would ensure that there was no addition to the family after that date. To ensure strict compliance with the rule, the Department of Personnel & Administrative Reforms, Government of Assam

issued instructions *vide* O.M. dated October 28, 1976 that, as regards new entrants to State Government service, it should be provided that persons having more than three children would not be considered for appointment and that unmarried new entrants must sign an undertaking to the effect that they would practice family planning measures and would not have more than three children. The O.M. also conveyed Government's decision that in the case of existing Government servants as also new entrants, persons having three or less than three children as on September 20, 1977 would face disciplinary action in the event of their having more than three children after the said date and will not be considered for promotion or for receipt of benefits and concessions normally applicable to State Government servants. The Finance APF Department of the State Government issued instructions *vide* their O.M. dated February 1, 1977 that the benefits of loans and advances such as House Building Advance, Motor Conveyance Advance, Bicycle Advance and Festival Advance as well as the benefit of Leave Travel Concession and Transfer Travelling Allowances will in future be admissible only to those Government servants who have three children or less after September 20, 1977 and Government servants already having more than three children on September 20, 1977 would be entitled to these benefits only if they submitted along with their applications a written undertaking to the effect that appropriate family planning measures had been adopted by them.

21.71 According to information furnished by the State Government, no report of any organised resistance to the family planning programme had been received by them. After the revocation of the emergency some complaints in regard to family planning excesses were received and these are being enquired into by the Grievances Cell constituted for the purpose.

21.72 According to information furnished by the State Government, complaints of death after sterilisation in 95 cases had been received during the period 1975—77. Investigation has been completed in 25 cases and in only 12 such complaints death could be related to sterilisation. Further, complaints of sterilisation of 21 unmarried persons and 7 persons over 55 years of age have also been received by the State Government.

BIHAR

21.73 In Bihar, 1,65,531 sterilisation operations were performed during 1975-76 against a target of 2,02,500. The Sub-Committee of the State Cabinet on Family Planning which reviewed the performance at a meeting on November 4, 1975 took the following decisions to encourage the family planning staff to achieve the targets assigned to them :—

- (i) Health and other officers and staff who achieved 200 per cent of the targets would be given one advance increment. Those officers drawing pay in the maximum of their respective scales of pay would be considered for grant of honorarium.

- (ii) Officers who failed to achieve 50 per cent of the targets would be given following punishments :—

- (a) An employee who failed to achieve 50 per cent of the annual target would be given one minus mark from 1973-74 onwards ;
- (b) Those officers who got 3 minus marks upto the year 1975-76 would be considered for removal from service.

The decisions were communicated to all Civil Health and Chief Health Officers in the Director of Health Services' letter dated November 11, 1975.

21.74 In reply to the Commission's questionnaire on family planning, the State Government have reported that the threat of termination of services was carried out in a number of Districts in 1976 and it was estimated that services of about 1,500 family planning staff were summarily terminated in terms of the conditions laid down in the letter.

21.75 A target of three lakhs sterilisation was fixed by the Government of India for Bihar for 1976-77. The target was raised by the State Government to six lakhs. The State exceeded the revised target, the actual performance being 6.8 lakh sterilisations. Specific targets for sterilisation were allotted to various districts. The District Magistrates were made responsible for achieving the targets. In the Chief Secretary's letter of July 10, 1976, the Divisional Commissioners etc., were informed of the following decisions :—

- (i) In addition to the officers and staff of the Health and Family Planning Department, teachers of primary and higher secondary schools, District Supdts. of Education, Sub-Divisional and District Educational Officer, Panchayat Sevakas, village level workers, Circle Inspectors, Extension Supervisors, Supply Inspectors, Block Development Officers, Personnel of Municipalities and District Boards, should also be involved in the programme and suitably be encouraged.
- (ii) Non-achievement of targets would render officers and staff of Health Department liable to punishment *e.g.* censure in case of achievement short of cent per cent, stoppage of increment with cumulative effect if achievement was less than 75 per cent and termination of service if achievement fell short of 50 per cent.

- (iii) Threat of departmental action against following categories for failure to achieve the annual target of six sterilisation cases :—

- (a) Every teacher of primary, higher primary and secondary school in the State ;

- (b) Every *parachayat sevaka*, village level worker, area Karamchari, extension supervisor, circle Inspector and supply Inspector.
- (iv) Threat of departmental action against field worker of municipalities, Zila Parishads, District Boards, NACs, etc., for failure to achieve family planning targets.

21.76 Under the Bihar Government Servants (Special Provisions relating to the Family Planning) Rules, 1976, notified on November 26, 1976, Government servants of reproductive age group having more than three children and refusing to submit to sterilisation, were to be covered by the following disincentives :—

- (a) denial of opportunity to enter Government service or even to appear in a competitive test or interview in absence of production of sterilisation certificate of self or of wife (wives) ;
- (b) denial of free medical facilities in Government dispensaries or hospitals ;
- (c) denial of facility to purchase goods at subsidised rates from Cooperative Societies meant for Government servants ;
- (d) denial of facility of allotment of Government quarters or of houses under Central Government ;
- (e) denial of entitlement to receive those instalments of Dearness Allowance which were sanctioned after the promulgation of the order ;
- (f) in case of Government servants belonging to scheduled castes and scheduled tribes communities, denial of opportunity to be promoted under reserved categories ;
- (g) denial of facility to have transfer TA ;
- (h) denial of facility to draw loans and advances (including GPF advance under certain conditions) ;
- (i) denial of facility to have house rent allowance or the facility to get the rent reimbursed ; and
- (j) denial of facilities to receive honoraria ; rewards and cash amount in lieu of unavailed leave.

21.77 The Bihar State Essential Articles (Control on Distribution to Unplanned Families) Order, 1976, promulgated on November 8, 1976 provided that Government servants and non-Government servants having three or more children and failing to get sterilised would be disqualified from benefits of controlled commodities and rationed articles, allotment of cars and scooters from Government quota, licence for operating public carriers, allotment of houses—housing plots, medical facilities, industrial aids and grants etc.

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The aforesaid disincentives and penalty provisions were withdrawn *vide* Chief Secretary's wireless message dated February 21, 1977.

21.78 The progress in sterilisation operation was found to be very satisfactory during December 1976 when a number of Districts exceeded the targets assigned to them. While conveying the Government's appreciation to the Commissioners of various Divisions on their performance, the Health Commissioner-cum-Principal Secretary to the Government pointed out in his letter No. 115(FP) dated January 10, 1977 that the State's achievement of 160 per cent of the target allotted by the Central Government was still low compared to the achievements of some other States such as Madhya Pradesh, West Bengal, Uttar Pradesh, etc. He, therefore, desired that all-out efforts should be made in the remaining three months to achieve better results. In this connection, he intimated the Government's decision that all Districts should aim at achieving at least 200 per cent of the targets that had already been given to them by the State Government.

21.79 In a background note on the implementation of Family Planning Programme in Bihar during the year 1975-76 and 1976-77, the State Government have described in the following words the strategy adopted and the steps taken to achieve the targets :—

“..... The technique of holding sterilisation camps which were inaugurated by the Health Minister or other dignitaries was adopted. Daily or weekly progress reports were called on wireless net work. Congratulatory messages were sent to district officers who achieved or exceeded the target with copies to other district officers. Cases of poor performance were reported to the Chief Secretary who would draw the attention of the Commissioner/Collector concerned. The Health Minister personally reviewed progress at the district/divisional levels and did not hesitate to pull up district officers who failed to report a satisfactory performance..... A tacit approval was implied in the posture adopted by the Government on various tactics adopted by district officers to make sterilisation popular among the people either through grant of additional monetary benefits such as free distribution of blankets etc., among acceptors of sterilisation or through exercise of gentle pressure on Government employees by enforcing various disincentives or linking of grant of various permits/licences with targets of motivation for family planning. The above pressures were generally made use of by district officers to achieve the initial break-through after which the pressures were generally eased off..... The progress in sterilisation upto July was poor. The Commissioners and District Officers were addressed by the Health Commissioner to gear up machinery for sterilisation in districts through his DO

letter dated 12th August 1976. It was mentioned that the State Government took a serious view of the non-fulfilment of sterilisation targets. It was suggested therein that some district officers had prescribed progress cards for all categories of the staff who had been given family planning targets in which targets given and progress achieved had to be shown for every month duly certified by the Medical Officer of the area; the salary/fixed TA/TA of the staff was to be released only after targets prescribed were achieved. The letter was intended to endorse some instances of "gentle pressure" that was reportedly exercised by District Officers over subordinate staff in the matter of motivation for family planning. Recourse was taken to actual stoppage of salary of school teachers for non-fulfilment of motivational targets only in some districts in the State. The Education Commissioner *vide* his letter dated November 16, 1976 re-emphasised the crucial role and duty of school teachers in the achievement of the targets of the Family Planning Programme which was a programme of national importance but clearly instructed that salaries of school teachers must not be stopped for non-fulfilment of targets. This part of the letter perhaps went unheeded and the Education Department had to get the Chief Secretary to issue instructions to district officers not to stop payment of salaries to school teachers *vide* his letter No. 5258-E dated 18-12-76 followed by a wireless message on 18-1-77 from the Home Department coinciding with the announcement of Lok Sabha elections.

The will of the Government is translated into action by the administrative personnel at various levels. The administrative personnel received instructions written or oral for carrying out the policies and programmes of the Government. The seriousness and urgency with which a certain programme is implemented by Government servants depends on their understanding of the total situation which determined their order of priorities and limits of tolerance. When even the Chief Secretary was found to take quite sometime to agree to issue instructions to district officers not to stop payment of salaries to school teachers, the meaning of such delay was not lost on any one.

An official reference was made by a peon of the Revenue Department against refusal of ration card by the District Supply Officer in absence of sterilisation certificate. The Revenue Department protested to the Chief Secretary but the Health Department endorsed the action of the Supply Officer as such order came under the definition of 'gentle pressure' which had

approval of the State Government and for which later a special order was issued. The Transport Department also faced a problem when a District Magistrate ordered that acceptance of road tax was conditional on production of sterilisation certificate either of self or of two others. The order of the Collector had to be rescinded at the level of the Chief Secretary because it was adversely affecting collection of revenue...."

21.80 The State Government has reported that no complaint of any organised resistance to family planning was received in the Health Department directly or through the State Intelligence machinery. Some district officers had reported that some sections of Muslims and Christians were not favourably inclined towards the sterilisation programme and had recommended action under MISA but no such action was considered desirable by the State Government.

21.81 According to information furnished by the State Government, there were reports of three incidents of violence in connection with family planning programme at Purnea, Agamkuan (Patna) and at Nirsia in Dhanbad district. The incident at Agamkuan on 12-9-76 resulted in police firing and death of one person on the spot and injuries to a few other persons. It was officially reported that the firing was not connected with family planning and that the trouble had started over the removal of encroachment.

21.82 According to the State Government, 80 cases of death due to complications after operations had been investigated and confirmed. Thirty complaints in regard to sterilisation of unmarried persons are reported to have been received by the State Family Planning Bureau. The total figures of sterilisation of ineligible categories such as (a) unmarried persons, (b) persons having less than two children and (c) persons over 55 years of age have, however, not been furnished. In this connection, the State Government has stated as follows :—

"It is possible that a number of persons who were old and who were unmarried got sterilised at various places in the climate of disincentives and incentives described above and a large number of acceptors declared themselves to be having two or less children in order to get the maximum amount of compensation money. It also remains a fact that the scale at which sterilisation operations were performed was much beyond the capacity of hospital facilities available in the State. The operation theaters at the primary health centre levels or in the camps left much to be desired. The deficiency was sought to be offset by shifting stress to vasectomy and avoiding tubectomy except at medical college hospitals and district hospitals. It is to our good fortune that in about 7 lakh sterilisations under these conditions

the figures of cases of complications or deaths reported remained so modest."

21.83 The implementation of the Family Planning Programme appears to have considerably slowed down and almost come to a halt immediately after the announcement of the Lok Sabha elections in January, 1977. The situation has been explained as under by the State Government in the background note furnished by them :—

"The announcement of elections to Lok Sabha was made in mid-January 1977. The number of sterilisations came down to 50,752 in February from 1,54,437 in January and the number dwindled to 4,332 in March 1977. A strongly worded wireless message was issued by the Home Department to all district officers on 18-1-77, emphasising the fact that the family planning programme was a voluntary programme and no pressure other than what was contemplated in statutory Government orders should be used to motivate sterilisation. The Chief Secretary issued instructions through wireless on 5-2-1977 stopping any further organisation of camps for sterilisation. The Health Department was not consulted before the issue of these instructions. It was followed by wireless dated 27-2-77 in which medical officers were directed not to undertake sterilisation operations even if any person volunteered for sterilisation operations at the hospitals. This was virtually the end of a programme of national importance in the State which unfortunately got identified with the State of Emergency in the country."

GUJARAT

21.84 In Gujarat 1.53 lakh sterilisation operations performed during 1975-76 as against the target of 1,82,400 set by the Government of India. In the year 1976-77, however, the State exceeded the target of 2 lakhs by over 50 per cent with a performance of 3.17 lakhs.

21.85 The family planning programme was implemented in the districts of the State by the District Panchayat organisation. The District Development Officers/Collectors were entrusted with the task of achieving the targets allocated to the districts. Revenue officials at the Taluka level and Panchayat functionaries at the village level were given targets in motivating cases for sterilisation.

21.86 Compensation at the rate of Rs. 50 in addition to the normal incentive money was sanctioned to individual acceptors of sterilisation operation in some Tribal Talukas of Districts Dangs, Surat, Panch-Mahals and Sabar Kantha.

21.87 The State Government issued an order on October 28, 1976 directing that the educational concessions such as freeships, provisions of books, book

grants, and also scholarships (except Merit Scholarships) should be withdrawn in respect of all the children in the family unless :—

- (a) the number of children was restricted to three or the size of the family as on 1-8-77 ; or
- (b) one of the parents underwent sterilisation operation where the number of children was three or more on 1-8-77.

The above order was, however, to come into force w.e.f. August 1, 1977 only.

21.88 The State Government amended the Gujarat Civil Services (Conduct) Rules 1971 through a notification dated October 16, 1976 to make it obligatory for Government servants to restrict the size of family to three children. This was not, however, to apply to a Government servant having more than three children as on the October 31, 1977 provided he did not add to the number of children he had on that date.

21.89 The State Government also issued instructions by an order of June 20, 1975 directing that House Building Advance, Conveyance Advance, Festival Advance and Leave Travel Concession Advance should be granted to only those Government servants who restricted the size of their family to three living children or to the size of their family as on March 30, 1976, if they had more than three living children on that date. In an order dated December 21, 1976 the State Government directed that all Government officers competent to sanction House Building Advance, Festival Advance, Conveyance Advance and Leave Travel Concession Advance should ensure before any advance was sanctioned that the applications were accompanied by an eligibility certificate in terms of the order dated June 20, 1975. This was, however, cancelled by an order dated March 9, 1977.

21.90 In his letter dated September 9/10, 1976, the Secretary Health and F.P. Department requested the Home Department to issue instructions to Senior Police officials like the IGP, Addl. IGP, DIG, Commissioner of Police, etc. to select some areas in their jurisdiction for concentrated family planning drive wherein they can use their good offices to induce the eligible couples to opt for the terminal method. Subsequently, however, it was observed that the involvement of the Police Department in organising Prestige Camps created misunderstanding in certain quarters. The Home Department therefore issued instructions vide their letter dated November 9, 1976 to the IGP, that in order to avoid clashes between the villagers and police party in implementing the family planning programme, police should not be used for coercing the people to accept the small family norm and they should not also involve themselves directly or indirectly for motivational work. The Health & Family Planning Department also asked the Collectors in a letter dated December 6, 1976 not to involve the police Department thenceforth in the programme.

21.91 In his letter of 6th December 1976, the Chief Secretary called for total involvement of the District Level Officers with the family planning work so that the target could be achieved, if not exceeded. At the same time, he also directed the officers to ensure that results were achieved through persuasion and no coercion of any type was used.

21.92 According to information furnished by the Government of Gujarat no instructions were ever issued by the State Government for stoppage of salary to Government servants not subscribing to Government policy on the subject and no such complaints in this regard had come to their notice. However, action was taken against inefficient Family planning and Health workers e.g., increments were withheld in 275 cases, fine imposed in 23 cases and warning issued in 46 cases.

21.93 According to information furnished by the State Government there were five cases of sterilisation of unmarried persons, but all of them were reported to have stated that they gave wrong information in their original consent certificates. A total of 7,834 persons having less than two children and 23 persons over 55 years of age are reported to have been sterilised during 1975-77.

21.94 The State Government have also informed the Commission that 68 cases of death after sterilisation had been reported during 1975-77; and that in most of the cases complications resulting in death were not in any way connected with the lack of any surgical skill at the time of operation or after-care provided for the acceptors.

HARYANA

21.95 A sterilisation target of 74,300 was set by the Government of India for Haryana for 1975-76. This was considered to be high by the State Government and the Central Government agreed to reduce it to 45,000. The State exceeded the revised target by performing 57,942 sterilisation operations during 1975-76.

21.96 A target of 52,000 sterilisations was assigned by the Central Government for Haryana for 1976-77. Information furnished by the State Government in reply to the Commission's questionnaire on Family Planning shows that the target for 1976-77 was first raised to one lakh at a conference of Deputy Commissioners held on July 23, 1976 under the Chairmanship of the then Chief Minister of Haryana and subsequently on November 9, 1976 the revised target was further raised to two lakhs by the Chief Minister "arbitrarily against the advice of the Health Department". Even the target of two lakhs was exceeded in 1976-77 and the State achieved 2.22 lakhs operations which was more than four times the original target and was almost four times the achievement of the previous year.

21.97 The family welfare programme was given topmost priority since about July 1976. In order to achieve enhanced target the entire programme

was being coordinated under the personal supervision of the then Chief Minister. A number of decisions were taken at the Conference of Deputy Commissioners held on July 23, 1976 with a view to ensuring that Haryana was ahead of other States in the field of family planning. Some of the decisions taken at the above meeting are given below :—

(a) Deputy Commissioners must assume full responsibility in implementing the family planning programme so that "not only cent per cent family planning targets are achieved but also the State tops the country in respect of family planning."

(b) All the Ministers of Haryana Government were allotted one district each for supervising family planning programme, where, they would guide the members of Panchayat, Panchayat Samities, Local leaders as well as district officers for improving the programme.

(c) Regular vasectomy camps in villages should be held and all-out efforts may be made by all the officials and non-official agencies for the success of the family planning programme.

21.98 The Deputy Commissioners were informed in a letter dated August 6, 1976 of the Financial Commissioner that the emphasis during 1976-77 should be on vasectomy and that one big family planning camp should be held covering a population of about 10,000 in each block every month for motivating around 200 to 300 persons for sterilisation. The Deputy Commissioners were also asked to involve all departments and non-officials in the family planning programme.

21.99 The letter dated August 6, 1976 also conveyed the State Government's decision that all Government servants falling in the category of eligible couples and having three children or more must get themselves sterilised by October 31, 1976 and those in the eligible couple category having only two children, the youngest child being more than one year old, should get themselves sterilised by December 31, 1976. It was also made clear that no Government servant would be granted exemption from sterilisation operation merely because his/her spouse had had IUD insertion and claimed the use of condoms. The important role of teachers and officials of the Education Department in motivating the parents of the pupils for sterilisation was also highlighted in the letter.

21.100 In a conference of Deputy Commissioners held on November 9, 1976 it was decided that while the target date for completing sterilisation of Government servants in the first phase should be extended to November 30, 1976, the Conduct Rules should lay down punishment for non-compliance with Government instructions on the subject. While no such provision in the Conduct Rules was incorporated, all heads of Departments, Commissioners, Deputy Commissioners were informed by the Chief

Secretary on November 23, 1976 that those Government servants falling in Phase I and failing to get themselves sterilised by November 30, 1976 would be liable to punishment under the Punjab Civil Services (Punishment & Appeal) Rules, 1952.

21.101 A decision was taken by the State Government that the annual confidential report for 1976-77 should include an additional report on the assistance rendered by an officer in the F.P. work. While communicating the decision to all Heads of Departments, Commissioners and Deputy Commissioners, in a letter dated October 12, 1976, the Chief Secretary stated that the SDOs, Deputy Commissioners, and Commissioners of the Division would write the additional reports in respect of gazetted officers in the field and the Chief Secretary himself would write such additional reports as regards Heads of Departments and Government officers working as Managing Director/Chairman of Corporation etc.

21.102 In the case of Government servants falling in the category of eligible couples and having three or more children, sterilisation of self/spouse was made a condition precedent for availing of facilities such as transfer TA for more than two children, Government accommodation, medical reimbursement in respect of the third and subsequent children, loans/advances of all kinds etc. In such cases, Government servants/spouses were given time upto March 31, 1977 to get themselves sterilised.

21.103 On the question of non-payment of salary to Government servants for failure to get sterilised, the State Government have informed the Commission as follows :—

"No written instructions for stoppage of salary of Government servants not subscribing to the Government's policy on family planning were issued. But in practice this method was resorted to in many cases on a large scale. . . . It has been found from various reports from the field officers on different departments that in practice, pay bills were not passed till the eligible person got himself sterilised. In order to ascertain the eligibility of a person, Government servants were required to fill up a form indicating the number and sex of their children. Salary for the month of August, 1976 was not released in all the cases till this form had been filled up by the concerned Government employees. . . . This practice of non-payment of salary is reported to have been widely followed and unofficially accepted as an added motivational factor towards the achievement of the target."

21.104 The State Government have stated in their reply to the Commission's questionnaire on F.P. that lists of eligible Government servants were repeatedly circulated to all heads of Departments with strict directives that the concerned persons should report to the doctor concerned on the dates

mentioned against their names in order to get themselves sterilised. Many Government servants were suspended or transferred to far off places for their refusal to follow instructions on the subject. Information regarding the number of Government servants actually victimised is being collected by State Government.

21.105 In respect of persons not belonging to the category of Government servants, it was decided in the conference of Deputy Commissioners on July 23, 1976 that "a person who falls in the category of eligible couple (i.e. whose wife is between 15 years and 44 years of age and who has two or more children) but has not got himself sterilised should incur the following disqualifications, namely :—

- (i) he should be disqualified to be appointed or hold the appointment of a Lambardar or a Chowkidar (Revenue rules etc. should be amended accordingly) ;
- (ii) he should be ineligible for appointment to any Committee, Board or Body nominated by the Government or any department of the Government for any purpose whatsoever. (All administrative Secretaries will ensure compliance of this) ;
- (iii) he should be disqualified to be elected either as a Panch or a Sarpanch or a Member of the Panchayati Samiti, Municipal Committee, Market Committee, Co-operative Society or any other Committee elected under any law made by the State or to hold any of these offices. The administrative Secretaries will take steps to amend the relevant Acts/Rules accordingly.

21.106 The role of the Police in the implementation of the family planning programme in the State was one of the items discussed in detail at a Conference of the Deputy Inspectors General of Police held at Madhuban on 26th and 27th October, 1976. The following extracts from the proceedings of the aforesaid Conference throw light on the important role which the police was expected to play in the F.P. campaign in the State :—

"It was agreed that the Family Planning campaign has acquired the status of a national commitment. . . .

This is a programme of a great magnitude in which the Police will have to help the Administration on a suitably large scale. . . .

. . . . Action against those propagating against Family Planning has already been taken and should be continued under the MISA or DISIR.

Motivation should continue and we should educate the people during the village touring about the advantages of Family Planning and there is no harm in the Police motivating the people in this respect. . . .

.....If the Police know the attitude of the people in the village, we should know what action and to what extent it should be taken. If the Police goes into action they should err rather on the side of having extra strength rather than being under strength. It has often been seen that the presence itself of the police in large strength breaks up to resistance.....

.....Our role is to facilitate the carrying out of the campaign to success to our utmost. It is a very difficult and delicate task. This is a task which we cannot escape.....”.

On the role actually played by the Police in the family planning campaign during the emergency, the State Government have stated as follows in their reply to the Commission's questionnaire :—

“The police was extensively used to coerce the people to undergo sterilisation. Police force was used to surround, round up and coerce people to undergo sterilisation. In fact, such a large number of sterilisation less than a year would have been impossible without their help.....All the instructions regarding the use of coercion in the implementation of the programme, as also the involvement of the police, were issued verbally.”

21.107 On the use of coercive methods to achieve the very high target set by the Chief Minister, the State Government have stated as under :—

“One of the major steps was the element of coercion introduced in the implementation of this programme. Every government officer/official, including police and revenue officials, in the district, was given a target to achieve. They were asked to ensure that sufficient number of persons were brought to family planning camps. Buses were diverted to these camps and passengers sterilised. Persons were forcibly taken from villages, bus stands, and railway stations for sterilisation to family planning camps.”

21.108 There were instances of organised resistance in some villages to the sterilisation programme. Six of them resulted in police firing and in two of them—one at Nagina (Distt. Gurgaon) on September 28, 1976 and the other at Pipli (Distt. Sonapat) on December 2, 1976, four persons lost their lives according to the information furnished by the State Government. A Commission was appointed by the State Government to enquire into these incidents and excesses committed at villages Pipli and Nagina.

21.109 On the question of adequacy of infrastructure facilities to undertake sterilisation operations on a large scale, the Government of Haryana have informed as follows :—

“During the family planning campaign, an exceptionally large number of operations

were performed everyday and the total number of doctors available for performing these operations was inadequate. Because of this extraordinarily heavy workload, the doctors were always overworked and were constantly under strain. They had to work for long hours at a stretch and in many cases were on the job continuously for more than 12 hours. They were not allowed leave even on Sundays or holidays. Given these circumstances it is a fact that the doctors were labouring under heavy strain and the operations as well as follow-up care could not have been undertaken in the manner normally prescribed.”

21.110 According to information furnished by the State Government, 105 unmarried persons and 179 persons over the age of 55 years were sterilised during the period of emergency in Haryana.

21.111 The State Government has also informed that 132 complaints of deaths due to sterilisation operations have been received and are under enquiry. Further 428 persons were arrested for opposing family planning programme, 3 under MISA, 87 under DISIR and 338 under provisions of Cr.P.C. and other laws.

HIMACHAL PRADESH

21.112 In Himachal Pradesh, 16,830 sterilisation operations were performed in 1975-76 against a target of 18,600 set by the Government of India. There was, however, a steep rise in the number of sterilisation operations performed in 1976-77 when the achievement touched 1,00,740 operations which was more than three times the target of 31,500 for that year and six times the achievement of the previous year.

21.113 The target of 31,500 sterilisation operations fixed by the Government of India for 1976-77 was raised by the State Government to 50,000 in April 1976. This was further raised to higher levels on three occasions viz. to 60,000 on June 28, 1976 to 85,000 on August 5, 1976 and finally to 1,00,000 on August 20, 1976.

21.114 The State's target was distributed among the district and two major hospitals in the State. In the Chief Secretary's d.o letter dated April 23, 1976 to the Deputy Commissioners, it was mentioned that achievement of goals in family planning would to a great extent, depend upon the interest and efforts put in by each Deputy Commissioner, as the leader of the team of District officers. The Chief Secretary also informed Deputy Commissioners in that letter that their performance under the family planning programme would in future be kept in view while assessing their work.

21.115 In the Districts, specific targets were assigned to functionaries at different levels as may be seen from the following extract of letter dated

July 13, 1976 from the Deputy Commissioner, District Hamirpur, to all Block Development officers :—

"The District has been assigned the target of 1,360 cases during the month of July, 1976 With a view to achieve the targets, it has been decided in consultation with the concerned BDOs to start camps at 10 places on the dates mentioned below. The camp will be organised on mass scale and respective BDOs will be overall in charge of these camps. They will assign specific villages to specific officials like . Patwaris/Gram Sewaks/Forest Guards/School teachers/Health staff/PWD Staff and other functionaries at village and Block level A target of at least 15 cases will be assigned to each worker. The BDO should ensure that there are not less than 200 family planning cases in each camp. . . . In case any official deputed by the BDO for family planning work fails to achieve the target drastic action against him will have to be taken"

21.116 Incentives and disincentives for Government servants and members of the public were spelt out in a statement made by the then Health Minister on the floor of the State Assembly in March, 1976. Government's decisions in regard to incentives/disincentives were initially communicated through Health and Family Planning Department's letter dated March 27, 1976. One such decision was as under :—

"Essential commodities through fair price shops or ration shops would be available for husband, wife, and two children only, unless either of the parent undergoes sterilisation."

The above decision was, however, revoked on July 19, 1976. In supersession of the above said order of March 27, 1976, an order was issued on July 19, 1976 spelling out incentives and disincentives for the Government servants as well as for members of the public. The disincentives for Government servants contemplated sterilisation in the case of persons having more than two children as a condition precedent for availing of facilities such as reimbursement of medical expenses in respect of all children, allotment of Government accommodation, grant of house building advance, vehicle loans, and transfer T.A. Further fresh entrants to Government service were required to give an undertaking that they would limit their family size upto two children. Persons having more than two children were required to get sterilised before recruitment. Disincentives for members of the public envisaged that persons having more than two children would have to undergo sterilisation so as to be eligible for any public office or grant of house site or scholarship/fee concession for their children etc.

21.117 In the drive to achieve the sterilisation target, the State Government focussed special attention on the Government employees. The Health and Family Planning Department's letter dated September 6, 1976 laid emphasis on a complete follow up to ensure that all eligible couples working in Government offices were sterilised. Subsequently in that Department's letter dated December 24, 1976 it was proposed that all Government servants who are eligible, would be given facilities to undergo sterilisation in medical institutions in a phased manner so that all of them could be sterilised by January 31, 1977. It was made clear in that letter that if an employee failed to avail of the facilities for sterilisation on the dates specified by his controlling officer, the concerned employee would attract the disincentives from the first of the following month. Further, such failure on the part of the Government servant would be considered a non-compliance with Government's orders necessitating disciplinary action by the concerned authority. The letter also mentioned that :—

"It shall be the part of the duties of every Government servant to periodically motivate such number of eligible persons to get themselves sterilised or to perform such other work in pursuance to the family planning programme as may, from time to time, be directed by the State Government.

No Government servant being an eligible person shall be entitled to any future annual increment in his/her scale of pay or be promoted unless such person or his or her spouse or all his wives, as the case may be get sterilised."

21.118 The services of school teachers were sought to be utilised in a big way in the course of the sterilisation campaign. In a letter dated August 23, 1976, the Secretary, Health and Family Planning Department informed the Director of Education, Deputy Commissioners and Chief Medical Officers of the State Government's decision to observe September, 1976 as Education Department Month. The Deputy Commissioners etc. were requested in that letter to chalk out a detailed programme of camps wherein "not only all the eligible teachers should get themselves sterilised, but an intensive motivational effort on the part of all teachers will be made". The letter also stipulated that "In case of eligible couples who undergo sterilisation they would be expected to bring two cases for sterilisation after having motivated them", and "in case of those who are not eligible, they would be bringing at least three persons for sterilisation to such camps". The letter made it clear that "motivation would not be complete unless it is followed by actual sterilisation and a certificate to that effect by the Camp-in-charge to the concerned teacher".

21.119 As pressure on the district authorities for achieving the targets mounted, they appear to have resorted to coercive methods as would be evident

from the following extracts from a letter dated October 15, 1976 from the Deputy Commissioner, Kulu to all heads of offices in the District :—

"We wanted to cover all Govt. employees under family planning campaign in the month of September, 1976, but unfortunately we have been able to achieve only 40 per cent of the target. Even the overall picture of the district is very distressing. In other districts both persuasive and coercive methods have been employed and all officers in the district are completely involved in the Family Planning campaign. In our district there is apparently no such involvement and most of the officers have remained completely indifferent to the Family Planning efforts. Now such indifference cannot be brooked and even coercive methods have to be applied in resistant cases.

I would, therefore, request you to review the Family Planning achievement in your own department immediately and ask your officers/officials eligible for sterilisation to undergo operation positively during this month i.e. October, 1976. In case they refuse to do so, their pay should be withheld and the Drawing and Disbursing officers may be instructed accordingly. The names of such resistant officer/officials be reported to me for initiating necessary action against them at the Government level".

21.120 As regards involvement of the police in the implementation of the family planning programme, the State Government have stated in their reply to the Commission's questionnaire that the family planning teams took the help of the police for maintenance of law and order and protection while organising the Family Planning camps in almost all the Districts of the State. In District Bilaspur, the police was used for motivational purposes also.

21.121 According to information furnished by the State Government, 3 unmarried persons, 156 persons having less than two children and 443 persons over 55 years of age were sterilised during the period of emergency. The State Government have also mentioned that sixty complaints of death after sterilisation operations had been received by the Family Planning Enquiry Board set up by them.

KARNATAKA

21.122 In Karnataka, 1,20,671 sterilisation operations were performed during 1975-76 against a target of 1,39,000 set by the Government of India. During 1976-77, the performance was 4,88,861 (upto February 28, 1977) against a target of 2,44,500.

21.123 The target set by the Government of India for 1976-77 was raised by the State Government to three lakhs in July, 1976; and subsequently to six

lakhs in December, 1976. The State target was distributed among several departments. The Heads of Departments were requested in an order, dated October 11, 1976, to instruct all subordinate officers concerned to ensure that the targets were achieved by putting forth their best efforts. A target of 90,000 sterilisations was allotted to the Revenue Department as against the Department's strength of about 26,000. Similarly, the Police Department with about 32,000 employees on its rolls was given a target of 90,000 sterilisations. The IG of Police issued a circular, dated November 12, 1976, to the Deputy Inspectors General, Superintendents of Police and other Unit officers indicating therein the District/Unitwise target and asking the officers not only to persuade police personnel having two or more children to get themselves sterilised but also to direct Circle Inspectors and Sub-Inspectors to take up mobilisation work among the public with the help and cooperation of the District Health Officers and ensure that the targets fixed for their units were achieved.

21.124 In order to implement the family planning programme with particular reference to the National Population Policy statement of April 16, 1976, the State Government issued an order on July 3, 1976. Following were among the decisions announced in that order :

- (i) Field workers who produced good results should be rewarded suitably and those whose performance was below expectation should be punished;
- (ii) Stringent action should be taken against those who carried on organised opposition to family planning programme.

21.125 The Chief Minister of Karnataka started receiving complaints that coercive measures were being employed under the family planning programme. The matter was taken up by the Secretary to the Chief Minister vide his letter dated November 5, 1976, to the Commissioner for Health and Municipal Administration. In his reply, dated November 9, 1976, the Commissioner, Health & Municipal Administration Department stated that "it has also been made clear to all concerned that force or coercion should not be used, but it is possible that in some cases, on account of excessive enthusiasm on the part of individual officers or on account of their anxiety to reach the targets fixed for them, coercion had been used". He further added that he was requesting the Additional Director of Health & Family Planning (HP) as also the Divisional Commissioners and the Deputy Commissioners to issue circular instructions that while persuasion and motivation should be resorted to intensively, no force or coercion should be used.

21.126 The order, dated July 3, 1976, listed some disincentives which stipulated sterilisation in the case of persons having more than two children as a condition precedent for availing of facilities such as allotment of houses, flats, tenements and shops, grant of loan or subsidy like house-building loan, takkavi loan, etc., and educational concessions like

freeships or scholarships (excepting merit scholarships). Formal orders enforcing the above mentioned disincentives were issued subsequently by the Revenue Department and Education and Youth Services Department. (The disincentives were eventually cancelled in October, 1977).

21.127 The Karnataka Civil Services (Conduct) Rules, 1966 were amended *Vide* a Notification, dated January 15, 1977, in order to promote the small family norm of three children among the Government servants. The rules, as amended, provided that every Government servant should limit the number of his children to three and in the case of a Government servant having more than three children as on January 31, 1978, it should be ensured that the number of his children did not exceed the number he had on that date. (This amendment to the Conduct Rules has since been cancelled on November 8, 1977).

21.128 The methods adopted by Government officials to achieve the targets may be seen from the following illustrative examples :

- (a) The Deputy Director of Public Instruction, Gulbarga, who was allotted a target of 7,120 sterilisations, issued a memo. on December 1, 1976, stating that Chittapur, Gunmitkal and Kamalapur had been selected for holding intensive camps on different dates from December 9 to December 19, 1976. It was also mentioned in the Memo. that all the school teachers should motivate as many cases as possible that local schools would be used as family planning camps for 10 days and that "the loss of school working days may be made good by working on Sundays and/or other general holidays". It is also seen from a memo. issued by the Assistant Education Officer, Chittapur on December 9, 1976 that 13 teachers were relieved of their duties w.e.f. December 10, 1976 with instructions to undergo vasectomy operation at Mass Camp, Chittapur, and to produce necessary certificate at the time of joining duty.
- (b) A meeting was held on August 31, 1976 by the Deputy Commissioner, Bidar, wherein all the District officials including the Deputy Director of Public Instruction, Bidar and Assistant Educational Officer, Bidar and some non-officials participated. The Deputy Commissioner, Bidar emphasised at the meeting that 65 per cent of the targets allotted to the various departments in the district should be achieved in September, 1976. A programme was drawn up for running special family planning camps for Government servants at different places in the district on different dates. The following decision was also taken at the meeting :

"It was also decided that all eligible Government servants of particular offices fixed for the dates should assemble at Deputy Commissioner's

office at 9 A.M. and proceed to Civil Hospital in procession with a banner in front."

In pursuance of the decision taken at the aforesaid meeting the Assistant Educational Officer, Bidar issued a Memo dated September 6, 1976 to all the Heads of the Institutions under him to instruct all the eligible Government servants in the Schools to report at Deputy Commissioner's office at 9.00 A.M. and

"proceed to Civil Hospital in procession with banner in front. Note—if anyone shows disinterest in family planning he will be dealt with seriously."

The Deputy Director of Public Instruction, Bidar District issued instructions to all the Heads of the High Schools and other officers of the Education Department in the district to relieve the eligible teachers to undergo vasectomy/tubectomy operations and verify their certificates afterwards. The relevant Memo. dated September 10, 1976 was also endorsed to Budget Section "with instruction not to issue the NDC (No Demand Certificate) for the month of September 1976 unless heard a word from this Section". Another endorsement was also made to the District Treasury Officer, Bidar, as follows :—

"With a request to issue instruction to the Sub-Treasury Officers of this District not to pass the bills without verifying the NDC."

21.129 According to information furnished by the State Government, there were cases of transfer of Family Planning Health Assistants, Auxiliary Nurse Mid-wives, Lady Health Visitors and Block Health Educators for reasons of unsatisfactory work in family planning.

21.130 The State Government have informed the Commission that barring an isolated instance of resistance from Muslims of a village in K.R. Pet Taluk, Mandya District, there was no organised resistance to the Family Planning Programme in the State. Criminal complaints were, however, filed against two persons one of whom was a teacher of a Government Primary School, for criticising Family Planning Programme or for obstructing the implementation of the programme.

21.131 In the course of the drive to achieve sterilisation targets, the procedures required to be followed by the officials at the field level were not adhered to. In this connection, following extracts from the proceedings of the Conference of the Regional Deputy Directors of Health and Family Planning Services, etc. held on February 2, 1977, are relevant :—

"10.1. Dr. Sridhar Upadhyaya, Joint Director (FP & MCH) said that there were

not many problems at the Directorate but they were there in the field. Many things had been said about the proper manner in which the several programmes should be implemented. It had been suggested that before the actual implementation of Family Planning one should conduct a survey of all the target couples in the area. This was an absolute prerequisite but was being neglected even today.

10.2. He said that the target couples registers were not kept up to date. In this context, the ANMs had not been given any guidelines. The registers had not been checked by superior officers like the Medical Officer of Health and this had created problems in Family Planning Programme."

21.132 According to the information furnished by the State Government 123 cases of death after sterilisation were reported during 1975-77. In 60 of these cases, where death had been presumed or established to have occurred due to complications arising out of sterilisation operations, monetary compensation had been paid. The remaining 63 cases are reported to be under investigation. According to the State Government, no case of death was found to have occurred on account of lack of after care.

21.133 The State Government have informed the Commission that 10,244 persons having less than two children were sterilised during the period of the emergency.

KERALA

21.134 In Kerala, 1,56,622 sterilisation operations were performed during 1975-76 against a target of 1,48,400. The performance in 1976-77 was 2,06,600 operations against a target of 2,22,500.

21.135 Officers at the District level organised family welfare camps and medical check-up camps for implementing the family planning programme; but only health services and family welfare staff were directly engaged in actual implementation. According to the State Government, no scheme of disincentives for members of the public or Government servants was introduced by the State.

21.136 The State Government have informed that there was no organised resistance to family planning programme during the emergency and no person was detained under MISA/DISIR or any other law for opposing the Family Planning programme. Further, no unmarried person or person over 55 years of age was sterilised during the period of emergency. The number of persons having less than two children sterilised has, however, not been furnished by the State Government.

21.137 According to the State Government 40 cases of death after sterilisation had been reported. The State Government has attributed these deaths to complications arising out of sterilisation operations.

MADHYA PRADESH

21.138 During 1975-76, Madhya Pradesh could not achieve the target of 1,63,800 sterilisation operations set by the Government of India, the performance being of the order of 1.12 lakhs operations. In contrast, the State's performance in 1976-77 was spectacular with an achievement of 10.01 lakh operations which was more than 3½ times the target of 2.675 lakhs fixed by the Government of India and was almost nine times the achievement of the previous year.

21.139 According to the information furnished by the State Government in reply to the Commission's questionnaire, the family planning campaign in the State was accorded very high priority and the responsibility for achieving the District targets was placed on the Collectors. Most of the Departments were involved at the field level, thereby compelling the largest number of Government officials to secure the largest number of persons for sterilisation. The Police personnel were also involved in motivational work. While seeking the cooperation of all departments in implementing the family planning programme, the Health Secretary in his d.o. letter dated May 15, 1976 suggested that :

- (a) The Police Department which came into contact with the people at different levels including people in jails etc. could help in motivational work;
- (b) Revenue Department's officials like Patwari, Kotwar, Gram Sewak etc. could also motivate for sterilisation people coming in contact with them ;
- (c) Teachers who have special relation with parents of the pupils under their care could also do motivational work.

In reply to Commission's questionnaire, the State Government have mentioned that the police was associated with the programme at Divisional and District level; and, in some districts, the police was allotted special targets of sterilisation cases whereas in other Districts its role was limited in organising camps and maintaining law and order there.

21.140 The Chief Secretary reviewed the performance periodically district-wise and addressed letters to the Commissioners and Collectors commending or criticising the leaders and laggards among them, as the case may be. He repeatedly impressed upon them to show higher and higher levels of performance so that the State could take a lead over the other States such as Maharashtra and Uttar Pradesh. In his d.o. letter dated April 22, 1976, to the Divisional Commissioners, the Chief Secretary stated that every employee in each Department should be involved in the family planning programme and atleast 25,000 to 30,000 sterilisation operations would have to be performed every month. The State achieved 3.31 lakh sterilisations by August 1976 thereby exceeding the annual target of 2,67,500 within five months,

Congratulating the District Collectors and other officials for fulfilling the annual target the Chief Secretary stated in his letter dated September 13, 1976 that "there is no reason why we should not be able to perform seven lakh operations by the time the year closes". A few months later, however, the Chief Secretary expressed personal dissatisfaction when the monthly performance fell from the level of 86,000 in October 1976 to 55,000 in November, 1976. In his d.o. letter dated January 3, 1977 to the District Collectors, the Chief Secretary pointed out that there had been a regular fall in the performance with the result that the State was in danger of lagging behind other States. He asked all the Collectors to gear up the District machinery so that maximum work was done in the next three months.

21.141 The State Cabinet took a number of decisions on June 6, 1976 for effective implementation of the family planning programme. The following among those decisions are noteworthy :—

- (a) Over and above the incentive money given by the Central Government, the State Government would give Rs. 25 to each person having more than three children for undergoing sterilisation;
- (b) Every teacher, Gram Sewak and Patwari should motivate at least one case failing which the annual increment in pay would be stopped. Satisfactory performance would earn mention in the Annual Confidential Report;
- (c) Habitual criminals may get a remission of one month if they get themselves sterilised;
- (d) Government employees having three children would be given preference in allotment of (i) Government accommodation, (ii) Scooters and (iii) houses by the Housing Board, if they/their spouses got themselves sterilised.

Following disincentives were enforced in respect of Government employees having more than three children :—

- (i) Denial of Government accommodation and liability to pay 50 per cent extra rent if in occupation of Government accommodation (This would operate only if the Government employee failed to get sterilised within six months);
- (ii) Loss of entitlement to house rent if not sterilised within one year;
- (iii) Loss of entitlement to festival, scooter, house building or foodgrain advances/loans if the Government servant did not get sterilised.

21.142 According to the State Government no instructions for stoppage of salary of Government servants for not subscribing to Government policy on family planning were issued. Officers at lower

level, however, did issue such orders e.g. the District Education Officer, Sagar, some District Panchayat and Welfare Officers, Collectors of Bastar, Chhatarpur, Shivpuri and Bhind Districts. It is also seen from the State Government's reply to the Commission's questionnaire on Family Planning that there were instances of pressure on Government servants through other measures such as denial of increment, refusal to sanction loans and advances, transfer to far off places and termination of services etc. Further pressure was brought to bear on members of the public also through denial of licences/permits/quotas, no objection certificate for movement of wheat etc.

21.143 In reply to Commission's questionnaire on Family Planning the State Government have mentioned that "in the atmosphere built up by the above mentioned factors and on account of the allocation of individual targets to the personnel of practically all departments as well as the enhancement of motivation fees, in their zeal to achieve the targets and to grab as much motivation money as possible, many over-enthusiastic officials and non-officials indulged in pressure tactics or forcibly obtained consent of the people for sterilisation".

21.144 According to the State Government no instances of large scale organised resistance to the family planning programme came to notice. This has been attributed by the State Government to censorship and punitive measures such as MISA. Some instances of resistance such as those mentioned below, were, however, reported by the Inspector General of Police :—

- (a) In village Bhanpuri, district Chhatarpur, some people were forcibly being taken for sterilisation. The people resisting this were proceeded against u/s 197/452/506/323 IPC.
- (b) Two of the thirteen Adivasis operated upon for sterilisation at Primary Health Centre, Bijapur, district Bastar, reportedly died as a result of sepsis due to lack of after care. This created resentment in the area.
- (c) In village Barela, District Bilaspur, 40 persons were forcibly taken for sterilisation. This was resented by the people and complaints were made against the police and the doctors.
- (d) On February 18, 1976 the villagers of Amiliha (Shahdol) assaulted the Government servants engaged in the implementation of the Family Planning Programme. They were proceeded against u/s 353 and 147 IPC.
- (e) On September 13, 1976 the Muslim Community of Chanderi, District Guna, protested against the operation of a bachelor Moham-madan, aged 21.

In their reply to the Commission's questionnaire, the State Government have also mentioned that "though it is common knowledge that people were forcibly taken away from houses and other public places but no record of these instances is available".

21.145 According to the information furnished by the State Government 10 persons were detained under MISA in connection with family planning programme, the Districtwise break-up being: Raigarh (1), Bhind (1), Indore (6) and Satna (2). Besides, 115 persons were arrested u/s 151 Cr.P.C. and other laws.

21.146 The State Government have also informed that 84 unmarried persons were sterilised in the State during the emergency. Information in regard to the sterilisation of persons over 55 years of age or those having less than two children has not, however, been furnished by the State Government.

21.147 According to the State Government there were 132 cases of death either during operations or after operations, in the year 1976-77.

MAHARASHTRA

21.148 Maharashtra State was allotted a target of 3.183 lakh sterilisations by the Government of India for the year 1975-76. The State Government achieved 6.11 lakhs sterilisations, thus exceeding the target by nearly 100% during the year 1975-76. The target allotted to this State for the year 1976-77 by the Government of India was 5.62 lakhs. The State Government raised this target to 10 lakhs in April 1976 and to 12 lakhs in January 1977. The achievement of the State in the year 1976-77 was 8.33 lakhs sterilisations which were far in excess of the target fixed by the Central Government but fell below the revised target of 12 lakhs set before itself by the State Government.

21.149 The Health Department of the State Government allotted specific targets to the Districts and each District further distributed the targets among the blocks, primary health centres and other institutions. At the District level, while achievement of 60% of the target was the responsibility of the Zilla Parishad the remaining 40% was to be achieved by the District Collectors with the help of Government Departments at the District level. Every District was in the charge of a Minister who supervised the progress of Family Planning Programme in that District. In a "warning letter" dated February 20, 1976 from the Deputy Director, Health Services, Nagpur Circle, it is mentioned that the Primary Health Centres were required to perform at least 30 sterilisations per month and, irrespective of this minimum quota, the medical officers were also required to complete annual targets fixed for the Primary Health Centre.

21.150 In terms of a State Government circular dated December 5, 1975, officers of all Government Departments were required to indicate their specific performance in promoting family planning programme while recording their self-assessment for the purpose of the annual confidential reports. In some cases, field officers were cautioned that their performance in the programme would be taken into account while writing the confidential reports and for purposes of their promotion. Just as good performance by individuals was rewarded, adverse notice was taken of those who showed inadequate results.

21.151 The Chief Minister and the Minister-in-charge of Public Health took personal interest and made it clear from time to time to the authorities at different levels that the targets must be achieved. In his letter dated January 10, 1976 the Secretary (PH) informed the District Collectors etc. that "the CM has gone on record that if persuasion does not succeed in motivating people, Government would not hesitate to adopt compulsive and coercive measures." It is seen from a letter dated September 17, 1976 from the Joint Director (FP) to the District Level Officers that the Chief Minister was keen to see that monthly targets were given to each District and a minimum of 1.5 lakh sterilisations were performed each month throughout the State.

21.152 In the Public Health Department's circular dated September 28, 1976 every District Health Officer was asked to ensure that in his district at least 500 sterilisations were performed everyday. Immediately, thereafter, on September 30, 1976 the Joint Director (FP) wrote to all District Health Officers informing them of the order personally given by the Minister for Public Health that the sterilisation programme should be stepped up to achieve 1,000 sterilisations per district per day. A reference was made in that letter to Shri Sanjay Gandhi's proposed visit to the State towards the end of October, 1976 and it was stated that: "the Chief Minister desires that before the visit of Shri Sanjay Gandhi, Maharashtra State must have completed five lakh sterilisations". In this context, the District Health Officers were asked to leave no stone unturned to achieve this objective.

21.153 By the end of October, 1976, the State achieved five lakh sterilisations and by November over six lakhs. Towards the end of December 1976 the Chief Minister complimented the Collectors and Chief Executive Officers and others of the districts which had achieved above 70 per cent of the annual target allotted to them. He expressed his disappointment in the case of those districts where the performance was of the order of only 50 to 70 per cent of the annual sterilisation target. In the case of Districts that showed less than 50% performance, the Chief Minister expressed his grave disappointment and also mentioned that he took a very serious note of the shortfalls in this field. On January 12, 1977 the Chief Minister reviewed the performance of 11 districts lagging behind in the sterilisation programme. In the Review Committee he reiterated that revised targets allotted to all the Districts must be achieved by March 31st so as to enable the State to achieve the target of 12 lakhs sterilisations in 1976-77. In the light of the instructions of the Chief Minister, the Joint Director (FP) wrote to all the Collectors etc. on January 14, 1977 asking them to take immediate action to achieve the enhanced target. In that letter it was made clear to the Collectors that the Chief Minister was very particular that all the eligible Government servants should be impressed upon to undergo sterilisation to avoid stringent action.

21.154 The Chief Minister is also reported to have emphasised in his address while inaugurating a vasectomy camp at Aurangabad on September 11,

1976 that the Police Department should also be fully involved in motivational work and that a survey of the police Department should be carried out and those having three or more living children should be sterilised. This is contained in a letter dated September 17, 1976 of Joint Director (FP) to the District Health Officers. In reply to Commission's questionnaire on family planning, the Government of Maharashtra have stated that the police were directed to give necessary assistance to various departments, Zilla Parishads etc. to organise campaign and also for maintaining discipline. IG of Police, however, sent a wireless message dated October 19, 1976 followed by a letter dated October 25, 1976 to all subordinate officers to convey the Government instructions that police should not directly associate themselves with the Family Planning programme of motivation and that the Department concerned should carry out the programme on its own. He also clarified that, in supersession of order dated October 1, 1976 police should come in only as a last resort when a law and order situation is created in the process of the implementation of the Family Planning Programme.

21.155 Several incentives, and particularly disincentives concerning public servants had been adopted over a period of years in the State. The incentives were mainly in the nature of grant of special casual leave for public servants undergoing family planning operations. The disincentives in operation for a number of years envisaged production of a sterilisation certificate from Government employees having three or more than three children to avail of (i) house building advance, (ii) motor car/motor cycle/scooter/cycle advance, (iii) maternity leave, (iv) festival advance, (v) leave travel concession, (vi) T.B. concession, (vii) medical reimbursement charges, (viii) free medical treatment, (ix) allotment of quarters to Government servants and (x) grant of land for agricultural as well residential purposes.

21.156 Among the disincentives applicable to members of general public were (a) denial of all freeships, provision of free books etc., (b) denial of scholarship excepting merit scholarship, (c) denial of free medical treatment to freedom fighters and their families etc.

21.157 An idea of the steps taken by the Collectors and other officers to fulfil the targets allotted to them may be had from the following illustrative samples:-

- (i) The Collector, Kohlapur, sent the following telegram on January 20, 1976 to all the Tehsildars and Block Development Officers:—
 "COMMISSIONER PUNE DIVISION
 INSTRUCTED TO COMPLETE FAMILY
 PLANNING TARGET BY 31ST INSTANT
 (.) ARRANGE TO SECURE VASEC-
 TOMY CASES BEFORE 31ST INSTANT
 AT ANY COST (.) NO SPECIAL FAMILY
 PLANNING CAMP TO BE ARRANGED
 (.) CASES TO BE TAKEN TO PRIMARY
 HEALTH CENTRES/DISPENSARIES (.)
 POWERS UNDER EMERGENCY BEING
 EXERCISED IN RESPECT OF PERSONS

ELIGIBLE FOR FAMILY PLANNING BUT REFUSING TO UNDERGO (.) REPORT DAILY PERFORMANCE OF TALUKA ON PHONE (.)"

- (ii) The District Health Officer, Zilla Parishad, Aurangabad, sent a telegram on March 11, 1976 to the Block Development Officers etc., to disburse the pay for February 1976 in respect of those teachers who had completed target of 2 cases and had also got themselves operated, if eligible. It was made clear in the post copy of the telegram that salary for the month of February 1976 would not be disbursed to those attendants (Class IV Staff) who were eligible and had not undergone sterilisation.

21.158 There were complaints about excesses committed by the Barsi Municipal Staff in Sholapur District. Enquiry conducted by the Joint Director of Health Services and the Assistant Collector of Sholapur during the period of Emergency revealed that some persons had been forcibly sterilised. These included some lepers and eight persons who had been operated for the second time. According to the State Government the Chief Officer of the Barsi Municipal Council was transferred from Barsi and departmental action against him was in progress. The Municipal President was asked to take disciplinary action against such of the Municipal staff as were found responsible for the excesses.

21.159 The Chief Executive Officer, Buldhana had suspended 266 Zilla Parishad employees during a period of one month between December 1976 and January 1977 for their failure to take part in the Family Planning Programme and to undergo vasectomy operation or to motivate eligible persons for vasectomy operations. The State Government has intimated the Commission that they considered this action as unduly harsh and arbitrary and ordered departmental action against the Chief Executive Officer, Buldhana. They have further intimated that all the 266 employees of the Zilla Parishad were reinstated in February 1977.

21.160 As per the reply of the State Government to the Commission's questionnaire on family planning, action as indicated below was taken against employees of the Zilla Parishads throughout the State:—

Action taken	No. of employees involved	Remarks
(i) Termination of Services	9	2 employees were taken back in service as they underwent Family Planning operation.
(ii) Withholding of salaries	532	Salaries were subsequently paid.

Action taken	No. of employees involved	Remarks
(iii) Withholding of annual increments	135	Increment of 54 employees have since been released. Cases of the remaining 81 employees are under consideration.
(iv) Transfer	25	Orders of transfer were later on cancelled.
(v) Reversion	2	They were restored to their original position after two months.
(vi) Fine	1704	Fines in respect of 1480 persons were refunded.
(vii) Censure/Warning in service rolls.	86	—
(viii) Ordinary warnings	164	—
(ix) Suspension	273	These employees were reinstated some time later.

21.161 According to information furnished by the State Government in reply to Commission's questionnaire, organised public resistance to family planning programme had been reported in the districts of Aurangabad, Nanded, Parbhani, Nagpur, Chandrapur, Buldhana, Sangli, Akola and Jalgaon.

21.162 The State Government have informed that during the period from October, 1975 to March, 1977 the number of cases of sterilisation of ineligible categories was:

Un-married(37), having less than two children (6,958) and persons over 55 years of age (368). During the period 1975-77, 151 cases of death resulting from sterilisation operations or lack of aftercare thereof had also been reported.

21.163 The State Government have also informed that 11 persons were detained under MISA and two person were arrested under the DISIR for opposing family planning programme during the Emergency.

MANIPUR

21.164 During 1975-76, the State's performance was 847 sterilisations against a target of 1,600 set by the Government of India. In 1976-77, however, the State performed better, the achievement being 6,286 operations against a target of 4,500.

21.165 The target of 4,500 sterilisations in 1976-77 was distributed among hospitals, primary health centres and other institutions in six districts. All Programme Officers in charge of the various institutions were asked by the Director of Medical Health and Family Planning Services to make all efforts to achieve the targets assigned.

21.166 Disincentives for Government employees decided upon at a meeting of State Cabinet on August 30, 1976 contemplated that facilities such as all kinds of loans and advances and allotment of Government accommodation would be available to a Government employee having more than two children only if:

(a) the employee/spouse underwent sterilisation operation; or

(b) the employee gave an undertaking not to add further to the family.

Further, maternity leave to women employees would be restricted to the first two children only; and Government servants having more than two children would be entitled to travelling allowance for the third and subsequent children in the event of transfer, only if they underwent sterilisation operation. As regards entitlement to medical reimbursement for treatment of third and subsequent children, the Government servant was required to give as undertaking not to add further to his family. All these disincentives were, however, ordered to be withdrawn in terms of Office Memorandum issued by the State Health Department on May 20, 1977.

21.167 According to information furnished by the State Government no unmarried person or person over 55 years of age was sterilised during the period of emergency nor was there any case of death on account of post-operative complications.

MEGHALAYA

21.168 In 1975-76 Meghalaya exceeded the sterilisation target of 1,500 fixed by the Government of India by performing about 2,100 operations. In 1976-77 also the State exceeded the target of 3,500 with a performance of 7,513 operations.

21.169 The State's target for 1976-77 was sought to be achieved by assigning specific targets to the staff of Health & Family Planning Department and also to the doctors and the para-medical staff. In the Health & Family Planning Department's letter dated October 11, 1976, individual targets ranging from 50 to 300 in a year were assigned to Assistant Surgeons of Primary Health Centres and Sub-Centres, Rural Family Welfare Centres etc. Non-medical staff such as Lady Health Visitors, Auxiliary Nurse Mid-wives, Pharmacists etc. were also required to motivate 50 to 100 sterilisation cases per year. It was made clear in the aforesaid letter that those who failed to achieve the prescribed target might be asked to furnish explanation and, if necessary, departmental proceedings might be initiated against them. It was also made clear that the performance of individual workers achieving full target would be reflected in their confidential reports; performance of those achieving 90 to 99 per cent of the targets would be regarded simply as satisfactory and performance of those achieving 80 to 89 per cent would be regarded as poor and reflected as such in the Annual Confidential Reports. Those achieving below 80 per cent of the target would be asked to explain the reasons for such low performance with a view to

withholding their increments or crossing or Efficiency Bar. The Director of Health Services, Meghalaya asked all Civil Surgeons, Additional Civil Surgeons etc. in his letter dated October 27, 1976 to bring to the notice of all workers under their respective jurisdictions the fact that family planning performance would find reflection in their Annual Confidential Reports and that departmental proceedings would be initiated in case of failure to achieve the assigned target.

21.170 In reply to the Commission's questionnaire on Family Planning the State Government have stated that no instructions had been issued regarding any incentive or disincentive schemes nor was there any instance of stoppage of salary of any Government servant or denial of increment or promotion in connection with the family planning programme.

21.171 According to information furnished by the State Government, no instance of sterilisation of any unmarried person or any person above 55 years of age has come to notice. However, 82 persons having less than two children were reported to have been sterilised during the emergency according to the State Government. The State Government have also informed that there was no case of death resulting from sterilisation during the emergency.

NAGALAND

21.172 A target of 1,000 sterilisation operations was fixed by the State Government for 1976-77. The State achieved a total of 355 operations in that year.

21.173 In reply to Commission's questionnaire on family planning, the State Government have mentioned that no scheme of incentives/disincentives was introduced nor was any kind of pressure brought to bear on Government servants or members of the public in the course of implementation of the family planning programme.

21.174 The State Government have furnished NIL information insofar as sterilisation of unmarried persons, or persons having less than two children or over 55 years of age is concerned. There was also no case of death resulting from sterilisation operation.

ORISSA

21.175 A target of 1,09,200 sterilisation operations was fixed by the Government of India for Orissa for 1975-76. The State exceeded this target by performing 1,25,040 sterilisation operations in that year.

21.176 For 1976-77, the Government of India fixed a target of 1,95,500 sterilisation operations for Orissa State. The State Government raised this target by 100% to 3.91 lakh sterilisations. In this connection, following extracts of the Minutes recorded on July 24, 1976 by the then Minister of State for Health and Family Planning and Urban Development are relevant:—

"When Maharashtra, Haryana, Punjab and other States in India are able to achieve

200 per cent in family planning, there is no reason why Orissa should lag behind and more so, when Orissa had got Karve Award twice. As such, necessary steps should be taken to see that family planning target reaches 200 per cent at least....."

The State Government's decision to raise the target for 1976-77 to 3.91 lakh sterilisations was intimated to all the Chief District Medical Officers *vid* Director (FP)'s letter dated August 7, 1976. By the end of December, 1976, about 2.47 lakh sterilisation operations were performed in the State. The position was reviewed by the State Government in January, 1977 when a decision was taken to further raise the sterilisation target for 1976-77 to 4.62 lakhs. In this connection following extracts of notes from the relevant file of Health and Family Planning Department, Government of Orissa, are reproduced below:—

'A'

"...I was given to understand by Deputy Minister and Minister, Health and later, by Chief Minister and Shri Jagannath Patnaik, Minister, Finance, P&C and M&G that Shri Sanjay Gandhi, our National Youth leader, is expected in our State on the 29th and 30th instant. The fillip given to this programme by Shri Sanjay Gandhi is well-known throughout the country. The Youth Organisation in the State has also evinced substantial interest in this programme. It will, therefore, be not only appropriate, but will give a great fillip to the programme, if we observe a special Family Planning Month in the State w.e.f. the 29th instant, the date Shri Gandhi is expected to arrive in Orissa. During discussions in this regard, Deputy Minister and Minister, Health Minister, Finance, P&C, M&G, and Chief Minister have also emphasised this. I have consulted our officers concerned in the Health and Family Planning Directorates. We have assessed that, with the cooperation of all Departments and other agencies of the State Government, urban and rural Local Bodies, and voluntary organisations, including the Youth Organisation in the State, we should be able to render facilities of sterilisation operations to about 3,000 eligible persons per day throughout the above Month....

2. Keeping in view the above, and our earlier suggestions to all Collectors, CDMOs, RDCs, etc. I have placed below a draft which may kindly be approved for issue....

Sd/- A.L. Nair

January 14, 1977

Secretary to Government

Health and F.P. Department

Sd/-M. Nag,

14-1-77

Dy. Min. (H).

As proposed. Regarding involvement of youths the CDMOs be intimated specifically

to contact the Youth Congress Presidents and draw detailed programme. Secretary will consult S.W. Department for special programme for children during the month.

Sd/-B. Gomango, 15-1-77

Minister, Health & F.P., Orissa.

'A' prepage is approved. The circular may issue Shri Sanjay Gandhi will inaugurate the F.P. month on the 29th instant.

Sd/- B. Acharya

17-1-77

Chief Minister"

In pursuance of the above decision the State's target was raised from 3.91 lakh to 4.62 lakh sterilisations; and accordingly, the Health and Family Planning Department of the State Government issued a circular on January 17, 1977 intimating revised monthly targets for the Districts for the remaining three months of 1976-77. The State Government finally achieved 3,22,984 sterilisation operations during 1976-77 which exceeded the target of 1.95 lakhs set by the Government of India by about 65% but fell short of the target of 4.62 lakhs set by the State Government itself by about 30%.

21.177 The State's target was distributed among the 13 Districts and in each district the Chief District Medical Officer was made directly responsible for fulfilling the targets. In the Health and Family Planning Department's Circular dated July 14, 1975 sent to the Director of Health and Family Planning Services, etc. it was *inter alia* mentioned that "Circulars have been issued previously that those who do not adhere to the target should be taken to task by initiating various disciplinary action such as stoppage of pay, termination of employment, etc." Action on the following lines was also suggested in the above said circular dated July 14, 1975:—

- (1) While writing the CCRs of individual officers including doctors, their performance with regard to Family Planning work should be specifically judged and recorded quantitatively as well as qualitatively.
- (2) In the CCR of the Chief District Medical Officer specific remarks should be given whether he has successfully carried out the Family Planning Programme in the District.
- (3) Those Chief District Medical Officers who fail to achieve the target should as far as possible be withdrawn from the field and posted to headquarters. Besides, disciplinary action should be initiated against them for negligence of duty.

21.178 In his circular letter dated June 8, 1976 to the member, Board of Revenue, all Revenue Divisional Commissioners, Secretaries of Departments, Heads of Departments and Collectors, the Chief Secretary, Government of Orissa stated that

while the Medical and Public Health set up in the State would be mainly responsible for the achievement of the target, it was imperative that all agencies of Government, besides local administrations and voluntary organisations etc. were to be fully and actively associated with the programme. The Chief Secretary also suggested that meetings be held at the Divisional as well as District levels to formulate plans of action and implement the same.

21.179 In connection with the drive to achieve the sterilisation targets, the following decisions were taken at a meeting convened by the Revenue Divisional Commissioner, Central Division:—

- (a) Definite targets (other than the targets given to the Health Department) would be given to the entire district administrative staff like Village Level Workers, Revenue Inspectors, Block Development Officers right up to the level of the Taluks and Sub-Divisional officers;
- (b) Collectors would assess every month the achievement of the target and report to the Revenue Divisional Commissioner.

In his letter of August 7, 1976, the Director (FP) drew attention to the aforesaid decisions taken by the RDC (Central Division) and stated that it would be very much helpful if similar directives were issued by other Divisional Commissioners also.

21.180 In order to encourage Government employees to actively participate in the family planning programme, a decision was taken by the State Government that all Government servants (including Family Planning staff) should be allowed to get the motivators' share of incentive money for the cases motivated by them. This decision was communicated *vide* Health and Family Planning Department's letter dated August 19, 1976 to the Director of Family Planning, Orissa.

21.181 In reply to Commission's questionnaire on family planning, the State Government have stated that in the light of the instructions issued by the Health and Family Planning Department on August 19, 1976 permitting Government servants to receive motivators' share of incentive money in respect of the cases motivated by them, policemen could also motivate persons to undergo sterilisation operations and receive the motivator's share of the incentive money. Apart from this, instructions for organising a Family Planning Drive among Policemen during Family Planning Fortnight observed from September 10, 1976 to September 25, 1976 were also issued by the State IG of Police. Further Police were also reported to have been present in a few largely attended sterilisation camps, particularly in urban areas, primarily for maintaining law and order and for regulating traffic.

21.182 No scheme of disincentives for Government employees was introduced by the State Government. In reply to the Commission's questionnaire

on Family Planning, the State Government have stated that proposals on this subject were taken up for examination on more than one occasion. The Health and Family Planning Department of the State Government formulated certain incentive/disincentives for Government employees. After the proposals were approved by the then Minister for Health & Family Planning, the matter was placed before the then Chief Minister who passed the following order:—

“Government servants represent a very small section of the people. The disincentives proposed would not have much practical effect and would only promote sorrow and resentment in those, who are denied of the little benefits Government gives on account of their family size. The fact of the father being subjected to certain disabilities will also have adverse effects on children. Instead, we should review whether facilities for voluntary limitation of the family are adequate and whether we can do anything more to strengthen the present level of motivation. This should be seriously considered.”

Thus according to the State Government, no disincentives to Government servants were introduced. Similarly, there were also no disincentives for members of the public.

21.183 In October, 1976 the Health and Family Planning Department of the State Government submitted a proposal for amendment to the Orissa Government Servants' Conduct Rules. The proposal was to the effect that every Government servant shall ensure that the number of his or her children does not exceed three and that any Government servant already having three or more children on the stipulated date, shall ensure that the number of his or her children does not exceed the number. On this proposal the then Chief Minister passed the following order on January 24, 1977:—

“...On the limited issue being considered in this file, a draft amendment to the Orissa Government Servants' Conduct Rules, 1959 may be prepared and brought up before the Cabinet at an early date.”

Accordingly a Memorandum was placed before the Cabinet and the Cabinet approved the proposal to amend the Orissa Government Servants' (Conduct) Rules in its meeting held on February 17, 1977. It is, however, seen from the State Government's reply to the Commission's questionnaire on family planning that formal amendments to the Conduct Rules were, not however, carried out.

21.184 In reply to Commission's questionnaire the Government of Orissa have stated that some schemes of awards were introduced by way of inducement to Government servants to show results in the family planning programme. No pressure of any kind was, however, employed in this connection.

21.185 According to the State Government, the services of 15 Class III non-gazetted family planning
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workers were terminated on the ground of their unsatisfactory performance in family planning work. Further, in the cases of 10 Class III Family Planning Staff, disbursement of salaries for periods ranging from one month to three months was withheld for some time on grounds of unsatisfactory work. The salaries were, however disbursed subsequently.

21.186 As regards complaints about forcible sterilisation, the State Government have informed the Commission as follows:

“...two oriminal cases were registered by Belpada Police Station of Bolangir District Under Section 326 IPC on 16-4-77 and 18-4-77 *inter alia* on the allegations of forcible sterilisation. While the subject matter of the complaint relates to the period of Emergency, information was lodged with the Police Station after the proclamation of the Emergency had been revoked. Both the cases have been treated as special report cases and investigation has been taken up by the Circle Inspector, Patnagarh. The cases are pending investigation.”

21.187 In reply to the Commission's questionnaire the Government of Orissa have stated that no instance of any organised resistance to the family planning programme had come to notice during the period of Emergency. The State Government, however, received through their own Intelligence Agencies some reports about a few specific instances of opposition to family planning programme from members of Christian and Muslim communities. According to the State Government, no person was detained under MISA nor was anyone prosecuted under DISIR for opposing the family planning programme.

21.188 According to information furnished by the State Government, 68 cases of death following tubectomy operations were either detected or reported during the emergency. Investigation revealed that in 17 of the 68 cases, death was not on account of causes attributable to the family planning operations. In 51 cases the cause of death could be attributed to the family planning operation e.g., death on account of tetanus.

21.189 The State Government have also informed the Commission that one unmarried person and 19,237 persons having less than two children were sterilised during 1976-77.

PUNJAB

21.190 In Punjab, the target of 43,100 sterilisation operations set by the Government of India for 1975-76 was exceeded with a performance of 53,083 operations. The State's performance shot up to 1,39,905 operations in the year 1976-77 against a target of 46,500 allotted by the Government of India.

21.191 The State's target for 1976-77 was distributed among the 12 districts and, according to a decision of the Cabinet Sub-Committee on Family

Planning headed by the Chief Minister, the responsibility for achieving the Family Planning target of the District was that of the Deputy Commissioner. The target of sterilisation operations set by the Government of India for 1976-77 was raised to 2.5 lakhs by the State Government at a meeting of Commissioners/Deputy Commissioners etc. held on August 24, 1976 under the chairmanship of the Chief Minister, Punjab. The record of proceedings of the meeting mentions that the Chief Minister desired that "for a social programme like Family Planning, persuasion should play a vital role, but there should not be any hesitation in bringing about pressure where necessary as the family planning programme is in the interest of the State and the nation".

21.192 In his letter dated September 7, 1976, the Chief Secretary intimated district-wise targets to the Deputy Commissioners and asked them to assign targets to the different departments in the Districts and keep a continuous watch on the performance. Simultaneously, while forwarding a copy of the aforesaid letter dated September 7, 1976 to the Heads of Departments, the Chief Secretary also requested them to issue suitable instructions to the District Officers to mobilise the resources in the districts under the orders of the Deputy Commissioner for the success of the family planning programme. The Chief Secretary further advised the Heads of Departments to make it clear to the employees in the field that special entry would be made in their annual confidential reports regarding their performance in the implementation of the family planning programme during the year.

21.193 Subsequently in a D.O. letter dated October 6, 1976 to the Heads of Departments, the Chief Secretary indicated sterilisation targets allotted to the various Departments. It is noteworthy that the Police Department with the total strength of 28,966 in 1975-76 was allotted a target of 26,175 sterilisations. In his letter of October 6, 1976 the Chief Secretary pointed out that "all Departments of the State Government have to share the responsibility for ensuring that all the people in the State adopted a small family norm". He also desired that Heads of Departments should keep a continuous watch on the performance of the Departmental Officers in the Districts and ensure that Family Planning targets allotted to them were fulfilled. In his letter dated October 13, 1976 to all Heads of Departments, Divisional Commissioners, Deputy Commissioners etc. the Chief Secretary also intimated Government's decision that SDOs(C), Deputy Commissioners and Divisional Commissioners would record in the Annual Confidential Reports the performance of various Departmental Officers in achieving the family planning targets entrusted to them.

21.194 Following incentives and disincentives for Government servants were introduced vide Finance Department's letter dated May 3, 1976 :

- (i) All loans and advances would be given by the Government only to those employees who limit the number of their children to two. Other Government employees will

be allowed such loans provided they (husband or wife) undergo vasectomy or tubectomy, and furnish a certificate to that effect, or if they guarantee the use of other methods of family planning so as not to have an additional child;

- (ii) Women employees shall be granted maternity leave for the birth of the first two children only; leave entitlement shall be raised to five months period;

- (iii) A Government employee, on transfer, having more than two children, shall not be entitled to claim travelling allowance in respect of the third or any subsequent child, unless he (she) or his wife (her husband) has undergone sterilisation or he (she) gives a guarantee to use other methods of family planning so as not to have an additional child.

Exemptions were, however, provided for in cases where both children of the Government servant happened to be of the Same sex or both or one of them was handicapped.

21.195 Another disincentive introduced vide Chief Secretary's letter dated May 26, 1976, related to allotment of residential accommodation only to those Government servants, who restricted the size of their family to a maximum of two children. It was clarified in that letter that, in the case of a Government servant having more than two children and in possession of Government accommodation, either the Government servant or spouse had to undergo sterilisation operation within six months of the date of the issue of the order or else a guarantee should be furnished that the Government servant would not have any more children. In case of failure of the Government servant to do so, market rent would be charged for the accommodation allotted by the Government. These disincentives were withdrawn in May-June 1977.

21.196 The State Government issued a Notification on January 12, 1977, amending the Punjab Government Employees (Conduct) Rules, 1966 by inserting Rule 21(a) which provided that every Government employee should ensure that the number of his children did not exceed three. A Government employee having more than three children as on December 31, 1977 was, however, to be exempted from the operation of this rule provided it was ensured that there was no further addition to the number of children, which the Government servant had on that date.

21.197 According to information furnished by the State Government in reply to Commission's questionnaire on family planning, no instructions regarding stoppage of salaries of employees for not subscribing to Government's policy on Family Planning were issued. However, a couple of instances of stoppage of the salaries temporarily by some District Officers came to the notice of the Government. As the disbursement of the salary by the District authorities/Heads of Offices was stopped temporarily

at their own level, the question of taking action did not arise at the State level, and when instances came to the notice of the State Government District Officers were asked to release the salaries.

21.198 According to the State Government, there was only one instance of organised resistance to the Family Planning Programme in the State in respect of which a case under Sections 353/506/427/148/149 IPC was registered at Police Station, Sunam on September 30, 1976. No arrest was made and the case was finally sent as untraced.

21.199 According to information furnished by the State Government there were 29 cases of death from the sterilisation operations or complications after sterilisation. The number of cases of sterilisation of persons with two or less than two children was 19,838 during 1976-77. Fifteen complaints in regard to sterilisation of unmarried persons had also been received. The number of cases of sterilisation of persons over 55 years of age has, however, not been intimated by the State Government.

RAJASTHAN

21.200 During 1975-76, 86,000 sterilisation operations were performed in Rajasthan against a target of 1,06,100 set by the Government of India. The performance in 1976-77 was 3,64,760 sterilisation operations against the target of 1,75,000.

21.201 In an informal meeting of the State Cabinet held in the last week of May, 1976, a decision was taken to raise the sterilisation target for 1976-77 to 3.5 lakhs. The revised target was distributed among the various districts and the District Collectors concerned were made entirely responsible for achieving the targets. In the Zonal meetings of the Collectors and Superintendents of Police held in September, 1976, the Chief Minister, Rajasthan stressed that the family planning programme should be taken up with all seriousness so as to accomplish 100 per cent of the assigned target by involving officials, non-officials, voluntary organisations, politicians and social workers.

21.202 Incentives and disincentives adopted by the State Government with the object of creating among the people an urge to limit their families were announced by the Chief Minister of Rajasthan on April 11, 1976. The disincentives contemplated that persons having more than three children would have to get themselves or their spouses sterilised for purposes of :

- (i) Fresh recruitments to services;
- (ii) Allotment of Agricultural and House site lands;
- (iii) Assistance in agricultural operations including grant of short and medium term loans;
- (iv) Loans for commercial and Industrial purposes by Rajasthan Financial Corporation and Cooperative Banks etc.;

- (v) Allotment of houses by the Housing Board;
- (vi) Facilities in Educational Institutions, treatment in Government Hospitals and Dispensaries, maternity leave etc.
- (vii) Grant of House Building loans.

Apart from these disincentives, a Government servant having more than three children with either spouse not sterilised would be denied (a) allotment of Government accommodation; (b) medical reimbursement; and (c) advance for purchase of conveyance etc. Administrative instructions based on the policy announcement of the Chief Minister were issued by various administrative departments.

21.203 At the Regional meeting of Collectors and Superintendents of Police held at Jaipur on September 9, 1976, the Chief Minister directed the Collectors that during the next three months they should focus all their attention on family planning work and ensure that the backlog of the previous five months was wiped out. The Chief Minister also clarified that the Government servants' personal conduct and attitude in respect of the National Family Planning Policy should be kept under special watch and the birth of a fourth child might in future even be treated as misconduct. In the light of the directions of the Chief Minister the Secretary, Medical and Public Health Department issued a circular to all Heads of Departments on September 10, 1976 *inter alia* stating that any transfer or disciplinary measures that might be suggested by the collectors in respect of any employee of the staff might be considered promptly. While addressing another Regional Conference at Jodhpur on September 18, 1976, the Chief Minister stated that entries in annual confidential reports of the District level officers would be made on the basis of the evaluation of their success in family planning programme in their respective areas.

21.204 According to the State Government, no instructions were issued by them regarding stoppage of salary of Government servants for not subscribing to Government's policies on Family Planning. However, in eighteen Districts, stoppage of salary of Government servants was resorted to in the course of the drive to achieve 100% targets.

21.205 There was one instance of police firing to deal with a law and order situation arising out of violent opposition to a family planning camp organised in village Harigarh, District Jhalawar on October 25, 1976. Two persons are reported to have lost their lives in the firing. The opposition to the family planning programme is reported to have led law and order problems in some other districts also.

21.206 In October-November, 1976 the State Government started receiving reports that after-effects of sterilisation were affecting working capacity of villagers in Rabi sowing and that the villagers were leaving the villages during daytime in order to avoid family planning teams. On reviewing the position the Chief Secretary, Rajasthan sent a wireless message on November 5, 1976 to all Collectors

etc. directing that in view of Rabi season and need for consolidation of public opinion, sterilisation operations on campaign basis should be stopped and only motivation work and operations of genuine volunteers should continue. It was also mentioned in the message that in supersession of previous Government orders certificates of family planning should not be insisted upon before grant of short-term loans by Cooperatives or Panchayat Samities or Government for the Rabi season. Later on, following written instructions by the then Chief Minister, orders regarding withdrawal/suspension of incentives and disincentives were issued by the State Government on January 21-22, 1977.

21.207 According to information furnished by the Government of Rajasthan 3,235 persons having less than two children and 10 persons over 55 years of age had been sterilised during 1976-77. Further, 44 complaints in regard to sterilisation of unmarried persons had also been received by the State Government.

21.208 A total number of 283 persons are reported to have been arrested for opposing family planning programme, of which 250 were under IPC, 7 under DISIR and 26 under Cr PC.

21.209 During the emergency, 217 complaints of deaths due to sterilisation operations had been received by the State Government and these are reported to be under enquiry.

SIKKIM

21.210 According to the information furnished by the Ministry of Health and Family Welfare, no specific sterilisation targets had been allotted for Sikkim during 1975-76 and 1976-77; still 262 sterilisation operations were performed in the State during 1976-77. In reply to Commission's questionnaire on family planning the State Government have informed that the family planning programme was not implemented on a large scale and that no incentives/disincentives were introduced either for Government servants or for the public. According to the State Government, no case of death resulting from sterilisation operation was reported and no unmarried person or person over 55 years of age was sterilised. During 1976-77, seven persons having less than two children are, however, reported to have been sterilised.

TAMIL NADU

21.211 During 1975-76, Tamil Nadu exceeded the sterilisation targets fixed by the Government of India, the performance being 2,70,691 operations during 1975-76 against a target of 2,11,300. In the year 1976-77, 5,69,756 operations were performed as against the given target of five lakhs.

21.212 The target of five lakhs set by the Government of India for 1976-77 was raised by the State Government to six lakhs. The State's target

was distributed among the different districts and these were further broken down into targets for the blocks, municipalities etc. Field workers appointed by the State Government exclusively for family welfare work were given specific monthly targets e.g. 10 sterilisation cases to each Block Extension Educator/Family Welfare Health Inspector, 5 cases to each Health Visitor and one case to each Auxiliary Nurse Mid-wife. The District Collector was given overall charge and control of the entire family planning programme in the district and was empowered to exercise administrative control over the field staff insofar as they related to the implementation of the family planning programme.

21.213 Some disincentives for Government servants, employees of local bodies and cooperatives were introduced *vide* Health and Family Planning Department's G.O. dated September 17, 1976. Subject to exceptions specified in the order, the disincentives contemplated restriction of facilities such as free medical attendance, maternity leave with pay to women employees and maternity benefits to wives of men employees, to the first three children only. Further, Government servants having two children or less or who had got themselves/their spouses sterilised were to given preferential treatment in the matter of (a) grant of Government loans for house building purposes; (b) purchase of scooter, motor car etc.; (c) assignment of house sites and; (d) allotment of houses by the Housing Board. The Order also envisaged that an undertaking would be obtained from the new entrants to Government service that they would restrict the number of children to two except in the case of those Government servants having both children of the same sex. In that event they could have one more child. They were also expected to furnish an annual statement about the family size etc. to the Head of Office. Some of these disincentives, were however, withdrawn in April 1977 and the rest in September 1977.

21.214 The services of School Teachers were sought to be utilised for motivational work among the public. Following decisions were communicated to the Director of School Education and other authorities *vide* Education Department's G.O. dated September 22, 1976 :

- (a) Every teacher working in an educational institution must get a minimum of two cases for sterilisation during the year. While there should be no compulsion on the part of either the motivator or the acceptor, the teacher should take active interest in this vital programme and try to exceed the target; and
- (b) Fulfilment of the targets would lead to commendation entries in the Character Rolls of the teachers concerned. Other incentives would take the shape of certificates of merit, appropriate cash awards and advance increments for outstanding contribution and State level awards for the maximum motivational targets achieved.

21.215 It was brought to the notice of the State Government at the Parliamentary Consultative Committee meeting held at Madurai on December 7, 1976 during the President's Rule that disciplinary action had been taken *en masse* against the teachers and staff other than Health and Family Planning staff for their failure to achieve the Family Planning targets fixed by the Commissioners of Panchayat Unions and others. There were also allegations that circulars had been issued by overzealous Panchayat Union Commissioners for suspension/dismissal of the teachers for failure to bring cases of sterilisation. The Commissioner and the Secretary Health and Family Planning Department, therefore, wrote to the Heads of the Departments concerned on December 8, 1976 requesting them to issue strict instructions to the Commissioners of Panchayat Unions and other executive authorities to withdraw all circulars threatening action against teachers etc. for non-fulfilment of the targets assigned to them. He also desired that persons who had been placed under suspension or had been dismissed from service on account of their failure to achieve family planning targets should immediately be restored to duty in the posts in which they were employed prior to their suspension/dismissal etc.

21.216 According to information furnished by State Government there was no organised resistance to the family planning programme during the emergency nor was any person detained under MISA/DISIR or any other law for opposing the family planning programme.

21.217 The State Government have not furnished information in regard to the number of cases of sterilisation of unmarried persons, persons having two or less children and persons more than 55 years of age. They have, however, informed that 90 cases of death after sterilisation had been reported during the period July 1975 to March 1977.

TRIPURA

21.218 In 1975-76, about 4,140 sterilisation operations were performed in Tripura against a target of 3,400 set by the Government of India. In 1976-77 also the target of 9,000 sterilisation operations was exceeded with a performance of 12,600 operations.

21.219 The target of 9,000 sterilisations for 1976-77 was raised by the State Government to 10,000 in pursuance of a decision taken at the meeting of the Council of Ministers held on August 7, 1976. The enhanced target was distributed among all the three districts in the State *vide* letter dated August 24, 1976 from the Directorate of Health Services. The District Magistrates and Collectors of the districts were asked to fix up sub-division-wise and block-wise targets.

21.220 In reply to Commission's questionnaire on family planning, the State Government have mentioned that no special incentives or disincentives were introduced for Government servants or members of

the public. However, a Notification was issued on February 15, 1977 amending Rule 21 of the Central Civil Services (Conduct) Rules, 1964 in its application to Tripura. The amendment introduced Rule 21(a) which enjoined on every Government servant to ensure that the number of his children did not exceed three. A Government servant having more than three children on March 31, 1978 was, however, to be exempted provided he ensured that the number of his children did not exceed the number he had on that date.

21.221 The State Government have informed the Commission that no pressure, inducement etc., were applied on public servants by the State Government in connection with the family planning programme.

21.222 According to the information furnished by the State Government no unmarried person or person over 55 years of age was sterilised during the emergency. However, 410 persons having less than two children were sterilised.

21.223 The State Government have also informed that two cases of death after sterilisation operations due to tetanus had come to notice. According to the report of the Committee of Medical Experts which had gone into these cases, there was no negligence and due care and caution had been taken in both the cases. The State Government have, however, taken a sympathetic view and sanctioned Rs. 5,000 as *ex gratia* relief in one case. In the other case also, action on similar lines is reported to be under consideration of the State Government.

UTTAR PRADESH

21.224 During 1975-76, Uttar Pradesh could not achieve the target of 1.75 lakh sterilisation operations set by the Government of India, the performance being only of the order of 1.28 lakh operations. In contrast, the State performed in the year 1976-77, 8.37 lakh sterilisations which was more than double the target of four lakhs set by the Government of India for that year and almost seven times the achievement of the previous year.

21.225 In a meeting presided over by the Commissioner and Secretary, Medical Department and attended by senior officers of the Medical Directorate and others on April 2, 1976, the target of four lakhs fixed by the Central Government was raised to five lakh sterilisations. This subject was again discussed in a meeting of the Cabinet Sub-Committee on Family Planning held on May 11, 1976. In the Agenda note for the meeting it was *in:er alia* mentioned that the Central Government expected that there should be at least ten lakh sterilisations in Uttar Pradesh during the year and, therefore, an attempt should be made to come up to this expectation. The Cabinet Sub-Committee decided at the above said meeting of May 11, 1976 to raise sterilisation target for 1976-77 to fifteen lakhs of which five lakhs were to be achieved through the staff of the Medical and Health Department, five lakhs through the Education Department

and the remaining five lakhs through other Departments of the State Government. This enhanced target was finally approved by the State Cabinet at a meeting held on June 2, 1976.

21.226 The question of allocation of specific targets to the various Departments was considered among other things at a meeting of Secretaries and Heads of Departments held on May 31, 1976 under the chairmanship of the Chief Secretary. The following were among the decisions taken at the meeting :

"....."

- (iv) The concerned Secretaries and the Heads of Departments will work out with the Secretary Health and the State Family Planning Officer in meetings to be held in Control Room and fix the departmental targets and to finalise draft of instructions which would be issued by each department for their staff. This shall be done within 10 days.
- (v) It should be examined by various departments which employ contractors whether some clause can be introduced in their contracts that part of payments would be linked with cases motivated by them amongst their employees."

In the light of the decisions taken in regard to allocation of targets, the Chief Secretary intimated specific targets for different Departments for the year 1976-77 *vide* his letter dated June 28, 1976. It is noteworthy that besides a target of 1,500 for employees of the Jail Department, a target of 1,500 sterilisations in respect of inmates of Jail Department was also indicated.

21.227 Coercive methods such as non-payment of salary to Government servants for failure to fulfil family planning targets were contemplated by the State Government in the beginning of 1976. A decision was taken at the meeting of Secretaries held on January 30, 1976 under the chairmanship of the Chief Secretary that with the exception of police and staff of Land Records and Collection in Revenue Department, workers of all other departments should be allotted a target of motivating at least one sterilisation case per month. To ensure achievement of this target, it was decided that salaries for the months of March and April should be paid, only when the Government servant submitted a certificate from the Medical Officer to the drawing and disbursing officer of having motivated a case. This decision was repeated in a Wireless Message dated March 1, 1976 from Chief Secretary to all District Magistrates, all Divisional Commissioners etc., wherein particular reference was made to workers of Educational Department. It was also mentioned that the name of any officer who obstructed or did not cooperate fully should be reported to the higher authorities. These instructions were, however, modified *vide* Chief Secretary's Radio message dated March 22, 1976. It was mentioned therein that "in view of urgent need to utilise budgetted amounts

during current financial year,.....the salaries for the month of February 1976 should be disbursed immediately without insisting on certificates of successful motivation."

21.228 To achieve the target of fifteen lakhs, the State Government initiated a number of steps which, in essence, amounted to coercion. The Uttar Pradesh Government Servants (Special Provisions relating to Family Planning) Rules, 1976 notified on July 2, 1976 and amended subsequently, made it obligatory for every Government servant to periodically motivate such number of eligible persons and to get themselves sterilised and to perform such other work in pursuance of the family planning programme as might from time to time be directed by the State Government failing which the payment of his salary and allowances or his annual increment or both would be liable to be stopped for such time and subject to such conditions as the State Government might direct by general or special orders. On July 7, 1976, the Chief Secretary sent a wireless message to all Divisional Commissioners and District Magistrates asking them to inform everybody that failure to achieve monthly targets will not only result in stoppage of salary but also suspension and severe penalties.

21.229 In the Department of Medical Health and Family Planning, orders were issued on July 14, 1976 that the salary of field workers should not be disbursed till they had achieved their monthly target. Although these orders were later rescinded in September 1976, the District Magistrate and Chief Medical Officer were empowered to withhold salary of a particular person if it was felt that such a step would be in the interest of the family planning programme. The Gram Vikas Anubhag-I also issued instructions that if the fixed target of sterilisation was not achieved by October, 1976, the salary of the defaulters for the month of November, 1976 should not be paid to them. In their Order dated September 30, 1976, the Education Department had also issued instructions for withholding payment of salary for the month of November, 1976 in respect of those teachers and employees of non-Government Higher Secondary Schools and Basic Shiksha Parishad who had failed to motivate the required number of cases.

21.230 On the other hand, if any Government servant of Health & Family Planning Department achieved double the target fixed for him, he was to get an advance increment. Similarly if an employee of some other department of the Government achieved triple of the target fixed for him he was entitled to an advance increment. If some Government servant for whom no target was fixed got 12 cases motivated on voluntary basis, he was also entitled to get an advance increment.

21.231 The Commissioners of Divisions and District Officers were authorised to make entries in the Character Rolls of the employees under them about the work done by them for the successful implementation of the family planning programme.

21.232 The rules of July 2, 1976 also contained the following provisions imposing restrictions on recruitment, promotion etc. :—

“No person shall be recruited or appointed to or be eligible to appear at any competitive examination or interview for recruitment or appointment to any post or service if he is an eligible person and has not got himself sterilised nor have his or her spouse or all his wives, as the case may be, been sterilised.”

Subject to certain exceptions, the term ‘eligible person’ was defined to mean a married person, whose spouse is alive and who together or in the aggregate have or had at the relevant date, not less than three children. The rules also contemplated denial of certain facilities to all Government servants having three or more children unless they/their spouses got themselves sterilised within three months from the commencement of the rules. The facilities so covered in the Rules included free medical aid including medicines except in cases of emergency, supply of subsidised articles from the Government Welfare Shops, allotment of Government owned buildings and quarters, entitlement to any instalment of dearness allowances sanctioned after enforcement of rules, maternity leave, grant of TA, loan or advance (including advance from the Provident Fund), concession in rent etc.

21.233 Measures similar to those mentioned above were also introduced to put pressure on employees of schools, intermediate colleges and basic schools in the State.

21.234 Pressure was also brought to bear on the members of the public to make the sterilisation programme a success. In this connection, the State Government issued on July 3, 1976, the Uttar Pradesh essential Articles and Things (Restriction on Grant or Supply to Unplanned Families) Order, 1976, which *inter alia* provided that, subject to certain exceptions, persons having three or more children would be deprived of the following facilities unless they or their spouses got themselves sterilised within three months from the date of commencement of the order :

- (i) Supply of rationed articles for more than four units;
- (ii) Issue of licence or permit under section 3 of the Essential Commodities Act, 1955, etc.;
- (iii) Allotment of scooters and cars from the discretionary quota of the Government;
- (iv) Allotment of houses;
- (v) Medical facilities at any hospital or dispensary run by the Government or any local authority;
- (vi) facilities such as concession in education fee or any stipend or reservation of seat in medical college and technical institution;
- (vii) Issue of permit for public carrier, mini-bus, autorickshaw or taxi.

21.235 Persons applying for licences/quotas to the Regional Food Controllers, District Supply Officers, etc., were being asked to bring family planning cases. On receipt of complaints in this regard, the Commissioner for Food and Supplies, Government of Uttar Pradesh, issued instructions on November 3, 1976, that only those persons who came under the category of ‘eligible for sterilisation’ should be required to bring family planning certificates.

21.236 According to information furnished by the State Government in reply to the Commission’s questionnaire on family planning, the police was involved in the family planning programme only to the extent of acceptance of sterilisation by those members of the Department who belonged to ‘eligible couples’ category. A Government order was issued from Medical Department on June 16, 1976 wherein while fixing targets for various departments of the State Government, a target of 5,500 was assigned to Police and Jail Departments. Subsequently, *vide* Government order dated June 28, 1976, from the Chief Secretary, employees of the Police Department and PAC were to achieve 7,500 cases and the targets for employees of the Jail Department were separated.

21.237 Later, in a Government Order dated November 16, 1976, it was reiterated that the Police should not at all be involved in motivation work in family planning programme. There were, however, complaints that some police officers had engaged themselves in motivation work. Such complaints prompted the State Inspector General of Police to issue instructions on December 21, 1976 that motivation work by police officers was against the policy of the Government and that police officers were strictly prohibited from bringing or taking acceptors for sterilisation.

21.238 The intensity of sterilisation drive and the methods adopted resulted in building up of resistance to the family planning programme itself. During August-December, 1976, there were at least eight instances of firing by the Police to deal with law and order situations arising out of resistance to the family planning programme. These took place in Sultanpur (August 27, 1976); Gorakhpur (October 16, 1976); Muzaffarnagar (October 18 and 19, 1976); Rampur (October 28, 1976); Bareilly (October 30 and December 7, 1976) and Pratapgarh (December 21, 1976). The police firing in Gorakhpur, Muzaffarnagar and Pratapgarh are reported to have resulted in the death of 12 persons. The State Government ordered enquiries into all the incidents of police firing.

21.239 In a note regarding resistance to family planning programme in Uttar Pradesh which was furnished to the Ministry of Home Affairs along with a d. o. letter, dated November, 18, 1976, from the Commissioner/Secretary (Home), Uttar Pradesh, the following assessment has been furnished :—

“.....The words, family planning and sterilisation have almost become synonymous and, therefore, in the common parlance when people express their views against the family

planning, their opposition is actually against sterilisation. The decision of the State Administration to pursue and implement the national population programme of family planning by undertaking a fixed number of sterilisation operations and fixing quotas for the districts and the departments has generated a sense of apprehension and has evoked opposition from political parties, Hindu and Muslim communal organisations and certain organised sections of society. Even those sections which subscribe to the policy and programme of the family planning, have expressed their opposition to use of coercion, threat or force in sterilisation and the manner of the execution of the programme.....

** ** ** **

..... Amongst the other organised sections Madhyamik Shikshak Sangh in its resolutions and meetings, while extending its cooperation to the family planning programme, has strongly assailed the policy of suspension and the withholding of salaries of teachers for failure to achieve the quota. The teachers in general at other places in the State have come to notice criticising their involvement in the family planning. But for the emergency, by now a strong common front would have been formed between them and the students to oppose this most important programme of the State Administration....."

The note also indicated, among others, the following possible reasons for opposition to the family planning programme :

** ** **

“(vi) The drastic disincentives seem to have generated an apprehension that instead of appeal, education and persuasion, the Government have adopted the tactics of threats, pressure and coercion. Obviously such measures have not been relished even though they are for their own and nation's ultimate good.

“(vii) There are complaints that field agencies adopt various highhanded measures to achieve the target and that the Government machinery is not fully geared to stupendous task it has undertaken. The follow-up action concerning sterilised cases needs tangible improvement.”

21.240 In the context of public resistance resulting in law and order situations, the State Government issued specific instructions on November 16, 1976, stating that while sterilisation programme could continue, there should be no force or coercion in implementing the same. The instructions which were sent by the Chief Secretary to all Commissioners and District Magistrates *inter alia* suggested that in areas where there was opposition to sterilisation, special attention should be paid to medical termination of pregnancy or distribution of Nirodh/loop. Subsequently, the Chief Secretary sent a Wireless Message

on December 22, 1976, *inter alia*, stating that while incentives and disincentives should continue there was no question of stoppage of pay of Government servants for not fulfilling their targets.

21.241 During the period of emergency, 201 cases of death after sterilisation had been reported in the State of which only 114 were found by the State Government to have been directly attributable to sterilisation.

21.242 According to information furnished by the State Government, 11,434 persons having less than two children were sterilised during the period of emergency. The State Government have, further informed that 164 complaints of sterilisation of unmarried persons and 69 complaints of sterilisation of persons over 55 years of age have also been received.

21.243 The following information in regard to arrests/detentions of persons for opposing the family planning programme during the emergency has been furnished to the Commission by the State Government :—

Detentions under MISA	62
Arrests under DIR	1159
Arrests under I.P.C.	303
Arrests under Cr. P.C.	20

Information given above is based on reports received from 43 Districts of Uttar Pradesh. Reports for the remaining 13 Districts are still awaited by the State Government. The following specific instance of detention under MISA for expressing opposition to the family planning programme is mentioned by way of illustration :

In a Circular dated July 27, 1976, addressed to all Head Masters/Principals of Schools/Colleges in District Faizabad, Inspector of Schools, Faizabad, mentioned that any leniency on the part of the employees in the implementation of the family planning programme might entail stoppage of salary, suspension and other drastic measures. It was further mentioned that the eligible employees who failed to produce vasectomy certificate by July 28 would be deemed to be guilty of insubordination and if such employees failed to produce vasectomy certificates by July 31, 1976, they would be placed under suspension. In compliance with the above circular, Principal, Government Inter-College, Faizabad, issued directives to the teachers under him to produce vasectomy certificates by July 27, 1976. Three teachers namely S/Shri Mohd. Ali Haider, Ali Haider Rizvi and Moqsood Ahmed Khan are alleged to have refused to undergo sterilisation in compliance with the directive issued by the Principal, Government Inter-College, Faizabad. Inspector of Schools, Faizabad, addressed a D.O. letter on July 27, 1976 to the District Magistrate, Faizabad requesting him to take action against the three teachers as an exemplary measures. On

July 28, 1976, the then District Magistrate, Faizabad, issued the following order :—

"A report has been received from the District Inspector of Schools, Faizabad, that Shri Mohd. Ali Haider, Assistant Teacher, GIC Faizabad has been opposing Family Planning Programme on the ground of religion. The activities of Shri Mohd. Ali Haider including his opposition to the Family Planning Programme have been to the detriment to the successful implementation of this programme. The attitude adopted by Shri Mohd. Ali Haider has adversely affected other employees who are taking shelter behind the plea of Shri Mohd. Ali Haider and refusing to adopt the programme. The Family Planning Programme is a National Programme. It has nothing to do with religion and it is a purely economic programme aimed at family welfare and improving the economic condition of the people. If objection on the ground of religion is allowed to hold good, there is likely to be grave dissatisfaction among other sections of the society, who have either already adopted this programme or are willing to adopt it. Apart from adversely affecting the progress of this programme, it is likely to create a situation which would be prejudicial to the maintenance of public order. According to Government orders strict action has to be taken against persons obstructing the implementation of this programme. Under these circumstances, it is a fit case in which detention under MISA on grounds of activities prejudicial to the maintenance of public order should be passed. I have, accordingly, passed an order for the detention of Shri Mohd. Ali Haider."

Similar orders of detention under MISA were issued in respect of the other two teachers also. All the three teachers were released from detention only when they got themselves sterilised and gave in writing that family planning was not against religion and they were getting themselves sterilised voluntarily.

WEST BENGAL

21.244 In 1975-76, 2,06,421 sterilisation operations were performed in West Bengal against a target of 1,96,100 operations fixed by the Government of India for that year. In 1976-77, the State's performance was about 8.8 lakh sterilisation operations against the target of 3.925 lakhs fixed by the Government of India.

21.245 The target of 3.92 lakhs for 1976-77 was raised by the State Government first to 10 lakhs and then to 11 lakhs. The State's target was distributed among the districts. At the District level, the District Family Planning Officer was in charge of the implementation of the Family Planning Programme. In the drive to achieve the sterilisation target, the Department of Health and Family Planning issued the following instructions :—

- (1) Individual members of the field staff would be given a specific target which should be achieved.

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- (2) Officers and staff (other than field staff) of the Department of Health and Family Planning should promote atleast two sterilisation cases in a year.
- (3) The achievement of the sterilisation target would be taken into consideration in the matter of promotion and other benefits.

21.246 At a meeting of Divisional Commissioners, District Officers etc. held on June, 26, 1976 under the Chairmanship of the then Chief Minister, it was *inter alia* decided that the State Police Personnel should be fully involved in motivational work and specific targets should be given to them. In pursuance of this decision the then Minister incharge, Department of Family Planning, wrote to the IG of Police, West Bengal on July 17, 1976 asking the latter to involve the Police personnel actively for motivation of acceptors for sterilisation operation in Hospitals/ Health Centres so that the Police Department could achieve a target of five lakh sterilisations by September 30, 1976. He, however, made it clear that "while motivating the acceptors the Police personnel must not go in uniform and must in no case use force or coercion" and that "motivation should be done through active persuasion only". Later on, however, it was decided by the then Chief Minister that the police should 'for the present' dissociate themselves from motivational work among the general Public. This decision of the Chief Minister was communicated by the Home Secretary, West Bengal to the State IG of Police on August 23, 1976.

21.247 No specific instance of use of force by the Police in the course of the Family Planning campaign has been intimated by the State Government. They have, however, mentioned in their reply to the Commission's questionnaire that rumours were afloat that coercive methods were used on the lower strata of population in Calcutta and that the people in the markets at Madarihata and Rajganj (Jalpaiguri) were rounded up for sterilisation.

21.248 As regards action against Government employees in the course of the Family Planning campaign, the Government of West Bengal have stated in reply to the Commission's questionnaire that though there is nothing on record, there have been individual cases, especially in the regional offices under the Directorate of Health Services where promotion, increment, crossing of efficiency bar, awarding of intermediate selection grade posts, etc., were delayed or denied for non-fulfilment of individual targets by the employees concerned. Further, letters of admonition were issued to officers of the Health and Family Planning Department for their unsatisfactory performance. Medical and para-medical staff were given punishment in the form of transfer to distant Places, demotion, suspension and dismissal. It has also been stated in the reply of the State Government that most of the penal measures have, however, been withdrawn by the present Government.

21.249 According to the State Government no records are available to show that any instructions were issued during the emergency for withholding payment of

salaries to Government servants for not subscribing to Government's policy on Family Planning. The State Government have at the same time stated that the SDO Diamond Harbour, was reported to have withheld payment of salary of his staff for their not subscribing to the Government Policy and the State Government had finally to intervene in the matter. The State Government have also mentioned that there were cases of dismissal and transfer to far off places but the real reasons for such penal measures were hidden under the cloak of wordings like "in the interest of public service/administration" etc.

21.250 according to the State Government, in August, 1976 there was some scare among the non-Bengalees in Calcutta in general and particularly the Muslims that they would be victims of forcible sterilisation. In fact several incidents arising out of opposition to the family planning programme were reported in August, 1976. In one such incident of assault which occurred in Calcutta a policeman lost his life.

21.251 The State Government have informed the Commission that there were complaints that acceptance of family planning measures was insisted upon before patients could be admitted for treatment in hospitals. Specific allegations of excesses in respect of nine family planning centres in District Nadia have been received and are being enquired into by the Vigilance Commission. Further, the Health and Family Planning Department of the State Government is reported to have drawn up proceedings against two officers.

21.252 According to the information furnished by the State Government, 65 cases of death arising out of sterilisation operations have been reported in the State. In 50 of these cases *ex-gratia* payment to the next of kin has already been made. In the remaining 15 cases recommendation for sanction of *ex-gratia* payment has been made by the Committee which has gone into such cases.

21.253 The State Government have also informed the Commission that five unmarried persons and 8,098 persons having less than two children were sterilised during the period of emergency.

ANDAMAN AND NICOBAR ISLANDS

21.254 In 1975-76, 242 sterilisation operations were performed in Andaman and Nicobar Islands against a target of 200 operations. The performance in 1976-77 was 1,376 sterilisation operations against a target of 500 set by the Government of India for that year. This was later revised by the Union Territory Administration to 1,300.

21.255 The target of 500 sterilisation operations fixed for the year 1976-77 by the Central Government was distributed among the hospitals and primary health centres *vide* memorandum dated June, 1976, issued by the Directorate of Medical and Health Services. In that memorandum the concerned medical

officers were requested to make special efforts to achieve the targets and to send the proposals for fixing individual targets to field staff such as Auxiliary Nurse Mid-wives, Sanitary Inspectors and Vaccinators etc., so that formal orders could be issued by the Directorate. It was also pointed out in that memorandum that any laxity or indifference or poor performance of the family planning staff in achieving the targets should be brought to the notice of the Director of Medical and Health Services so that necessary action against the defaulters could be taken.

21.256 The Andaman & Nicobar Administration has informed the Commission that no incentives/disincentives for Government servants or members of the public were introduced nor were Government servants subjected to pressure of any kind in the course of the family planning campaign in the Union Territory.

21.257 According to information furnished by the Andaman and Nicobar Administration in reply to Commission's questionnaire, no unmarried person or person over 55 years of age was sterilised during the period of emergency. Ten persons having less than two children were, however, sterilised during this period. The Administration has also informed that there was no death resulting from sterilisation operations during the emergency.

ARUNACHAL PRADESH

21.258 In Arunachal Pradesh 22 sterilisation operations were performed in 1975-76 against a target of 100 operations set by the Government of India. The performance in 1976-77 was 268 operations against a target of 600 fixed by the Government of India.

21.259 In reply to the Commission's questionnaire on family planning, the Arunachal Pradesh Administration has stated that no incentives/disincentives other than those prescribed by the Union Ministry of Health and Family Planning were made applicable to the Administration's employees in the course of the implementation of the family planning programme. In order to facilitate more effective implementation, the Secretary (P&D) Department issued instructions *vide* wireless message dated January 12, 1977 that expenses incurred on journeys from home to hospital and back in respect of any person undergoing sterilisation should be met by the Government.

21.260 In January 1977, the Secretary (P&D) sent a wireless message to all the Deputy Commissioners etc., apprising them of the decision to observe February 1977 as National Family Planning Month. The following guidelines were also given to the Deputy Commissioners, etc., in that message :

- (i) Main thrust of the family planning programme should be on Government employees having three or more children;
- (ii) non-Tribal civil population should be fully covered; and

- (iii) No Tribal should be forced but intensively motivated to accept family planning.

21.261 According to information furnished by the Arunachal Pradesh Administration, there was no case of death resulting from sterilisation operation during the emergency and no unmarried person or person having less than two children or over 55 years of age was sterilised during that period.

CHANDIGARH

21.262 In 1975-76, the Chandigarh Administration performed 1,163 sterilisation operations against a target of 1,300 operations fixed by the Government of India for that year. The Administration's performance in 1976-77 was 2,590 sterilisation operations against a target of 2,000.

21.263 Apart from payment of incentive money, in accordance with instructions issued by the Government of India, no other incentives/disincentives were introduced for the Administration's employees. Voluntary agencies like Rotary Club were involved in the implementation of the family planning programme. In a sterilisation camp organised by them, extra incentive of Rs. 50 was given. The Administration also persuaded the industries coming within its jurisdiction to pay extra incentive money of Rs. 50 and six days paid leave to their own employees undergoing sterilisation, in addition to incentives offered by the Government.

21.264 According to information furnished by the Chandigarh Administration in reply to Commission's questionnaire on family planning, there was one case of death after tubectomy operation. *Ex gratia* assistance was provided to the husband of the deceased. The Chandigarh Administration has also informed the Commission that from April 1976 to March 1977 four persons having less than two children were sterilised in the Union Territory. However, no unmarried person was sterilised in that period.

DADRA AND NAGAR HAVELI

21.265 In the Union Territory of Dadra & Nagar Haveli, 241 sterilisation operations were performed during 1975-76 against a target of 350 operations fixed by the Government of India. The performance in 1976-77 was 695 sterilisation operations against a target of 600 set by the Government of India.

21.266 In order to popularise the small family norm, the Dadra and Nagar Haveli Administration introduced a scheme of incentives/disincentives *vide* a memorandum dated November 5, 1976. The scheme *inter alia* provided that a person having three or more children would be given preference in the following matters if he/she underwent sterilisation operations:—

- (1) Issue of licences under Essential Commodities Acts/DIR.
- (2) Grant of permit for a public carrier or a State carrier or mini-bus or rikshaw or taxi under Motor Vehicle Act.

- (3) Award of scholarship to their children for pursuit of higher education.
- (4) Admission against the reserved seats in MBBS/Engineering to their children.
- (5) Allotment of agricultural land and house sites.
- (6) Assistance for setting up of industries and allotment of raw materials etc.
- (7) Allotment of Scooter/Motor Cars out of discretionary quota of State Governments.

21.267 In another Memorandum issued on the same date, i.e. November 5, 1976, the Dadra & Nagar Haveli Administration drew the attention of its employees to the Notification dated September 4, 1976 issued by the Government of India regarding amendment to the Central Civil Services (Conduct) Rules to provide for adoption of small family norm of three children by the Central Government employees. In this memorandum the Administration also intimated the decision that preference in respect of the following matters would be given to a Government servant having three or more children if he/she or spouse underwent sterilisation operations:—

- (i) Allotment of Government accommodation;
- (ii) Facility of loan for house building, advance for the purchase of cycle, motor-cycle, scooter or motor car, festival advance etc.; and
- (iii) Allotment of scooter/car.

21.268 In their reply to the Commission's questionnaire on family planning, the Dadra & Nagar Haveli Administration has informed that the aforesaid incentives/disincentives were not, however, implemented.

21.269 According to information furnished by the Dadra and Nagar Haveli Administration in reply to Commission's questionnaire, sterilisation operations were not performed on a large scale in the Union Territory and no death resulting from such operation had come to notice during the period of emergency. The Administration has also informed the Commission that 34 persons having less than two children were sterilised during the emergency and that no unmarried person or person over 55 years of age was sterilised in that period.

DELHI

21.270 During 1975-76, 22,510 sterilisation operations were performed in the Union Territory of Delhi against a target of 11,200 set by the Government of India for Delhi Administration. In 1976-77, 1,38,517 sterilisation operations were performed as against the target of 29,000 set by the Government of India.

21.271 The target of 29,000 sterilisation operations fixed by the Government of India for 1976-77 was raised by the Lt. Governor, Delhi to one lakh in April 1976. This target was distributed among the Family

Welfare Centres of the Delhi Administration, CGHS, NDMC, MCD etc. Specific targets were also fixed for various departments who were required to report to the Raj Niwas the daily progress of sterilisation work. The progress made was reviewed from time to time in meetings taken by the Lt. Governor or the Chief Executive Councillor where the Heads of Departments were repeatedly exhorted to ensure that all Government employees in the eligible category got themselves or their spouses sterilised.

21.272 A Press Note was issued by the Raj Niwas, Delhi on February 23, 1976 giving details of a package of incentives and disincentives as "likely to come into force" almost immediately". The disincentives for the general public envisaged sterilisation, in the case of persons having more than one child, as a condition precedent for availing of facilities such as allotment of houses, plots, house building or industrial loans, free medical treatment in the Government hospitals etc. The disincentives for inservice personnel also incorporated a similar provision in regard to facilities such as allotment/retention of Government accommodation, house building loans, advances such as festival advance, car/scooter advance and allowances such as children education allowance, uniform allowance, washing allowance, etc. It is seen from the records of the Delhi Administration that the disincentives were enforced immediately in some Departments on the basis of the Press Note of Raj Niwas although no formal orders of the Administration in this regard had been issued nor had necessary amendments to the relevant rules been carried out.

21.273 The formal order of the Administration setting out the incentives and disincentives for members of the public and Government servants was issued on May 5, 1976. The order modified, in certain important respects, the decisions announced in the Press Note, as may be seen from the following:—

- (i) According to the Press Note, couples having more than two children would be entitled to free medical coverage in Government hospitals only on production of sterilisation certificate in respect of the husband; and failure to produce the certificate would render them liable to pay, a minimum of Rs. 5 per visit to the OPD and Rs. 10 for indoor treatment. No exemption was contemplated. On the other hand, the order of May 5, 1976 provided that free medical coverage in Government/local body hospitals would be available to all children upto the age of 5 years. It also provided for exemption from payment to emergency and serious cases.
- (ii) According to the Press Note, entrepreneurs having more than one child coming forward for establishment of a small scale industry would be entitled to a loan only if they got themselves sterilised or produced a sterilisation certificate. It was also mentioned that those having more than two children would not be eligible at all. The order of May 5, 1976, however, provided that loans of all kinds including industrial loans would be

available even to persons having more than two children if they produced sterilisation certificate.

- (iii) According to the Press Note, in-service personnel having more than two children would not be entitled to festival advance, housing loans, car/scooter advance, cooperative loan, allotment of scooter on priority basis till they got themselves sterilised or they gave the prescribed undertaking. The order of May 5, however, incorporated disincentives only in respect of cooperative loan and allotment of car/scooter on priority basis and the other disincentives namely festival advance, housing loan, car/scooter advance were not included therein. Similarly, disincentives in regard to freeship, provision of books, book grants, etc., mentioned in the Press Note were excluded from the order of May 5, 1976.

21.274 The above said order of May 5, 1976, which toned down some of the disincentives envisaged in the Press Note was issued after detailed consultations with the Heads of Departments of the Administration and on the basis of recommendations of a task force of senior officers constituted by the Chief Secretary.

21.275 Disincentives contemplated in the Press Note for the Administration's employees in respect of facilities such as festival advance, house building advance, car/scooter advance, payment of children education allowance, reimbursement of tuition fee, washing allowance, free medical treatment and crossing of efficiency bar, etc., could not be enforced straightway pending a reference to the Ministry of Home Affairs for amendments to the relevant rules such as General Finance Rules, Central Government Employees House Building Advance Rules, etc., etc. However, Secretary (Medical), Delhi Administration conveyed the Administration's decision to all the Heads of Departments/MCD/NDMC and DDA vide letter dated May 7, 1976 that till the relevant rules were amended, the Heads of Departments might use "persuasive methods" to restrict these privileges only to those who restricted the size of families to two children or less than two children or to those who got themselves/their spouses sterilised. In consequence, normal facilities such as washing allowance, children education allowance, scooter advance and house building advance were denied to some employees of the Delhi Administration without any lawful authority. Information about denial of such facilities in the case of some employees of the Secretariat Administration Department has been furnished to this Commission in D.O. letter No. 9(12)77-SAD, dated April 19, 1978, from Shri W.C. Khambra, Under Secretary, SA Department, Delhi Administration.

21.276 It is seen from the relevant file of the Delhi Administration that no amendments of the rules as proposed in the Health Department's letter of May 3, 1976 to the Ministry of Home Affairs, were carried out. In fact, the Delhi Administration was advised

by the Ministry of Home Affairs in their letter dated August 28, 1976, that there should be uniformity in the rules applicable to the employees of the Government of India and the Union Territory Administration and that the proposal under consideration of the Government of India in respect of their own employees might be awaited by the Delhi Administration. Notwithstanding this advice and even after the Government of India issued orders in November, 1976 regarding disincentives for Central Government employees, no order was issued by the Delhi Administration bringing the disincentives enforced for its employees in line with the disincentives announced for Central Government employees. It is also noteworthy that while applying the small family norm concept to Central Government employees, the Government of India themselves provided for the limitation of family only after three children. Even after Central Government issued their instructions *vide* Notification dated September 4, 1976, the Delhi Administration continued to adopt a more restricted small family norm of restriction of family size after two children for its own employees.

21.277 As regards disincentive relating to allotment/retention of Government accommodation, the Public Works Department issued an order on May 17/21, 1976 directing that Government servants and others not fulfilling conditions of eligibility within 30 days would be required to vacate residential accommodation failing which they would be liable to pay licence fee at market rate. It is seen from the records of the Delhi Administration that some employees coming under the Secretariat Administration Department having more than two children but not yet sterilised, were charged market rent for the accommodation in their occupation. In some of these cases, the market rent recoverable was more than the basic pay of the employees thereby resulting in the virtual non-payment of the salary for periods ranging from one month to four months.

21.278 The order of May 5, 1976 specified *inter alia* that if at the time of interview, an eligible person having no child or one child gives an undertaking to restrict the size of his/her family to one child, he/she would get weightage for selection. Since interviews for Class I and Class II posts are held in the UPSC, the Services Department addressed a letter, dated June 14, 1976 to the UPSC requesting them to take appropriate action in the matter. In their reply, dated July 2, 1976, the UPSC pointed out that the interviews conducted by the Commission are in pursuance of the recruitment rules framed under Article 309 of the Constitution. The Commission also mentioned that the legal basis of the order dated May 5, 1976, was not clear and sought clarification whether the provisions of the order could over-ride the provisions of the recruitment rules duly framed and notified by the Government/Administration. This question was further gone into by a Task Force of senior officers including Special Secretary (Services) and Secretary (L&I). The Task Force recommended that the decision of the Ministry of Home Affairs may be obtained, to whom a reference was made by the Services Department regarding amendment to the recruitment rules.

Thereafter, the matter be placed before the Lt. Governor. However, before a final decision was taken, the order dated May 5, 1976, itself was withdrawn on February 10, 1977. The matter was further examined and Delhi Administration finally informed the UPSC *vide* their letter dated March 9, 1977 that their aforesaid reference dated June 14, 1976 might be treated as withdrawn.

21.279 Apart from the incentives and disincentives, the employees of the Delhi Administration and the local bodies were also subjected to other forms of pressure. In their reply to the Commission's questionnaire on Family Planning, the Delhi Administration have stated that, "in most of the cases only verbal instructions were given particularly in the various meetings taken by the LG & CEC wherein Heads of Departments were exhorted to ensure that all eligible couples got themselves sterilised and, if necessary, other measures including delay in payment of salaries to the employees be resorted to". According to information furnished to the Commission in Delhi Administration's letter No. F. 2610/77/EEA/M&PH dated February 18, 1978 :

- (a) Payment of salary was stopped or delayed in Municipal Corporation : Secretariat Admn. Deptt ; Local Self-Government Deptt; Irwin Hospital, New Delhi; Directorate of Industries; New Delhi Municipal Committee; Registrar, Cooperative Societies; DDA; Directorate of Education.
- (b) Notices of termination were issued by the Municipal Corporation; Directorate of Transport; Hospital for Mental Diseases, Shahdra; Delhi Development Authority.
- (c) Transfers were made by the Dte. of Industries; Municipal Corporation Delhi; Dte. of Education; Delhi Development Authority.
- (d) Increments/Promotions were delayed by the Municipal Corporation; Commissioner, Sales Tax; Chief Engg. PWD, Delhi; Bureau of Economics & Statistics; DESU; NDMC; DDA.

21.280 In reply to the Commission's questionnaire on family planning, the Delhi Administration have also stated that:—

- (i) Government teachers were impressed upon to motivate at least five cases each;
- (ii) Threats of transfer, suspension and termination of services were held out particularly in respect of Education Department and MCD;
- (iii) In MCD, a number of teachers and other employees were relieved and asked to report to the Headquarters for further postings. Those who underwent sterilisation were given the posting orders.
- (iv) In the matter of admission to certain schools preference was given to students whose guardians produced motivation slips.

21.281 Shri A. Biswas, former Director of Education, Delhi Administration has stated before the Commission that the then Lt. Governor, Delhi had told him of the decision that each teacher should bring five sterilisation cases. He has further stated that towards the end of May, 1976, the Lt. Governor and the Chief Executive Councillor noted that the Directorate of Education was motivating cases from outside but out of 8,300 eligible cases in the Department itself, only 300 persons had got themselves sterilised. According to Shri Biswas in September, 1976, he was told by the then Lt. Governor that all eligible teachers should get themselves sterilised and, if necessary, measures such as stoppage of salary/transfers could be resorted to for this purpose. In his statement, Shri Biswas has also admitted that some teachers were placed under suspension on the suspicion that they were indulging in rumour mongering and not cooperating with the Department in family planning work. He was also stated that about 52 of the teachers were subsequently reinstated as nothing was found against them.

21.282 Pressure was also brought to bear on members of the public through disincentives. One such disincentive related to denial in the case of persons having more than two children, of free medical treatment in Government hospital and dispensaries except on production of sterilisation certificate. Dr. Karan Singh, former Minister of Health and Family Planning stated before the Commission on July 7, 1978:—

"An interesting case is that while Hospitals under the Delhi Administration imposed a fee of Rs. 5/- for every patient, who had not undergone sterilisation, we refused to introduce any such measures in Hospitals directly under the Ministry of Health and Family Planning."

Another disincentive related to the insistence by the Food and Civil Supplies Department on production of sterilisation certificate by a person for the addition of the third and subsequent children in the ration card. Grant or renewal of a licence for fire arms or ammunition under the Arms Act to persons with more than two children was also subject to production of sterilisation certificate by the person concerned. A statutory order issued by the Delhi Administration in this regard on August 31, 1976, also provided that the licence of a person having two children was to become invalid within three months of the birth of another child, but this disability could be removed by production of a sterilisation certificate.

21.283 The Delhi Administration have also informed the Commission that as part of the sterilisation drive by the Delhi Development Authority, allottees of plots in resettlement colonies and applicants for allotment of plots, flats as well as industrial plots were required to furnish certificates of sterilisation before finalisation of allotment and handing over of the plot/flat. Similar restriction was placed in respect of applications for change of plots where applicants were required to bring 20 cases of family

planning. Cases have come to notice where one of the spouses had to undergo sterilisation operation to avail of the facilities offered by DDA even where the other spouse had already been sterilised but prior to declaration of emergency.

21.284 One of the features of the Family Planning Programme in Delhi during the emergency, particularly since about the beginning of 1976, was that the motivation aspect of the work was entrusted in a big way to voluntary agencies and social/political organisations. A large number of motivational camps sprang up in different parts of the city and persons were taken from such camps to sterilisation centres organised at the instance of selected social/political workers.

21.285 Among the major family planning camps were those organised by Smt. Ruksana Sultana in Dujana House, by Shri Lalit Makan in Pahar Ganj and Smt. Kaushalya Raman in Trans-Jamuna and other areas. The camp at Dujana House which started functioning from the middle of April, 1976 had to be closed on April, 19, 1976 following an unruly incident posing a threat to the maintenance of law and order. Dr. O. P. Sharma, Director of Health Services has stated before the Commission that the question of restarting the camp at Dujana House came for discussion on May 20, 1976, in the coordination meeting held under the Chairmanship of the Deputy Commissioner/Chief Secretary. At the meeting, Dr. Sharma had stated that it would not be desirable to start a camp in Dujana House at least as long as summer lasted. The same opinion was expressed by him in a meeting held under the Chairmanship of Chief Secretary on May 25, 1976. During the meeting the consensus was against holding the operation camp in Dujana House. However, in order to ascertain the decision of the Lt. Governor in this regard, Dr. O. P. Sharma met the then Lt. Governor as desired by the Chief Secretary. The Lt. Governor finally ordered that the camp might be started from May 26, 1976 and that it would be run by the Municipal Corporation of Delhi.

21.286 It appears that apart from law and order duties in the area, the police were also actively associated with the family planning work in Dujana House camp. Examination of Irwin Hospital records pertaining to family planning camp at Dujana House reveals that some policemen posted at the local Police Station had themselves acted as motivators and were actually shown to have received the motivation money against formal receipts.

21.287 In his statement Dr. O. P. Sharma has also mentioned that a sterilisation camp at Pahar Ganj functioned for one day on March, 28, 1976. The organiser of the camp, Shri Lalit Makan wrote to the Director of Health Services on April 20, 1976 expressing his desire to re-start the camp at Pahar Ganj. In his reply dated April, 24, 1976, Dr. O. P. Sharma, Director of Health Services informed Shri Makan that it would not be medically advisable to carry out sterilisation operations especially on the males in places other than proper institutions. Nevertheless,

the camp started functioning round about the middle of June 1976 and the services were provided by the Irwin Hospital.

21.288 On a review of the working of the aforesaid two camps, the Director, Health Services considered it necessary to write to Shri Navin Chawla, the then Secretary to Lt. Governor on October 19, 1976 in order to bring the following points to his notice in the interest of maintenance of high standard of services in the two camps:—

- (a) Work load should be even in all the institutions and, as far as Dujana House was concerned, the number of sterilisations to be performed should not exceed 100 per day in any case if the quality of service was to be maintained.
- (b) Motivational camp especially those serving Dujana House, Irwin Hospital and Pahar Ganj continue registering cases till very late hours and cases were sent till very late in the evening especially after 5 p.m. In order that high standards of medical services be maintained, the registration should be limited upto a particular period so that doctors were able to finish their work by 5 p.m. and sterilisation of equipment, linen etc. and replenishment could be done well in time to enable them to start the work next morning.

21.289 Dr. O. P. Sharma, Director, Health Services has stated that normally motivation was done in Family Planning Centres and the motivators had a link with such centres. However, with the coming up of a number of motivators especially at the political level the cases were brought straight by the motivator to the institutions and got operated. Pointing out that such motivators were not trained in various techniques of motivation, Dr. O. P. Sharma has also stated that, had the motivational work been left to or routed through the family planning department, the situation which obtained then could have been avoided. He has further mentioned that he had also offered in a communication to the Secretary to the Lt. Governor to train the motivators in a capsule course, but the offer was not accepted.

21.290 According to information furnished by the Delhi Administration in reply to Commission's questionnaire on Family Planning, 78 reports/complaints of deaths resulting from sterilisation operations had been received. Out of the 71 cases which had been looked into, only in 13, could death be attributed to sterilisation operations. The remaining 7 cases are reported to be pending further investigation.

21.291 In their reply to the Commission's questionnaire, the Delhi Administration have stated that no survey has been made to ascertain how many individuals having less than two children or over 55 years of age were sterilised. Complaints were, however, received from 32 persons alleging that they were sterilised, though unmarried.

21.292 The Delhi Administration have also informed that 100 persons had been detained during the period of emergency for opposing family planning the break-up being 3 under MISA and 97 under Cr. PC, and other laws.

GOA, DAMAN & DIU

21.293 In Goa, Daman & Diu 2, 800 sterilisation operations were performed in 1975-76 against a target of 4,400 operations fixed by the Government of India for that year. In 1976-77, the Administration performed 5,571 operations against a target of 8,000 set by the Government of India.

21.294 In reply to Commission's questionnaire on family planning, the Goa, Daman & Diu Administration has informed that the Collectorate and Departments of Education, Agriculture, Forest and Police were involved in the implementation of the Family Planning Programme. Such involvement was, however, confined to motivational work through education and persuasion.

21.295 The Administration introduced an incentive scheme for Government servants under which employees having two children would be entitled to two additional increments if they adopted terminal method of family planning. Employees having three children and adopting the terminal method would be given one additional increment. Besides, the Administration also took a decision that while distributing land to landless persons, priority would be given to those who were sterilised. Similarly, in the matter of grant of various loans either for industrial or agricultural purposes, priority was to be given to persons who had got themselves sterilised.

21.296 The Administration has informed the Commission that two cases of death arising out of tubectomy and one case of sterilisation of an unmarried person were reported in 1976-77. In the latter case, the Administration has informed that the person concerned had voluntarily got himself operated and there was no compulsion at all. No instance of sterilisation of persons having less than two children or over 55 years of age had come to the notice of the Administration.

LAKSHADWEEP

21.297 In Lakshadweep, 56 sterilisation operations were performed in 1975-76 against a target of 50 set for that Union Territory by the Government of India. In 1976-77, the performance was 149 operations against a target of 200 fixed by the Government of India.

21.298 In their reply to the Commission's questionnaire on family planning the Lakshadweep Administration has stated that no disincentive scheme was introduced for Government servants. A Draft Plan of action was formulated by State Level Committee for an intensive drive and submitted to Central Government for approval. The Plan was not implemented as the approval of the Ministry was not received.

21.299 The Lakshadweep Administration has also informed the Commission that there was no case of death from sterilisation operation in the Union Territory during the emergency nor was there any case of sterilisation of an unmarried person or person over 55 years of age. Seven persons having less than two children were, however, reported to have been sterilised during the period of emergency.

MIZORAM

21.300 In 1975-76, 905 sterilisation operations were performed in Mizoram against a target of 900 set by the Government of India. The performance in 1976-77 was 679 sterilisation operations against a target of 1800 fixed by the Government of India.

21.301 According to Mizoram Administration, the entire family planning programme was implemented on voluntary basis. No scheme of disincentives for Government servants or members of the public was introduced. Some staff members were, however, given cash incentives for their efficient performance.

21.302 In reply to Commission's questionnaire on family planning the Mizoram Administration stated that there was one case of death following tubectomy operation. An enquiry was conducted by a team of specialists and it was found that the death was purely due to concurrent diseases and not due to the sterilisation operation.

21.303 The Mizoram Administration has also informed the Commission that while no unmarried person or person over 55 years of age was sterilised, two persons having less than two children were sterilised during the emergency.

PONDICHERRY

21.304 In 1975-76, 4,688 sterilisation operations were performed against a target of 3,400 fixed by the Government of India for that year. In 1976-77, 8030 sterilisation operations were performed against a target of 5,300.

21.305 The target of 5,300 sterilisation operations fixed by the Government of India for 1976-77 was raised by the Pondicherry Administration to 7,300.

21.306 In the Health Department's G.O. dated September 16, 1976, a scheme of incentives and disincentives for members of the public was announced. The scheme *inter alia* provided that persons with three or more children should get themselves sterilised and produce a certificate to that effect in order to be eligible for the following benefits:—

- (i) Loans for construction of houses under the LIG and MIG schemes;
- (ii) Distribution of surplus lands to the landless and cultivating tenants;
- (iii) Supply of improved appliances to the weavers' Cooperative Societies;

(iv) Loans for construction of houses for Fishermen; and

(v) All benefits afforded by the Agriculture Department.

The aforesaid disincentives were cancelled *vide* Department's GO dated June 3, 1977.

21.307 In order to encourage Government servants to participate actively in the family planning programme, the Chief Secretary, Pondicherry Administration issued an order on September 16, 1976, requesting all Heads of Departments/officers to indicate the fact of good motivational work in the Confidential Reports of those members of the staff, who had motivated 10 or more cases of sterilisation.

21.308 In reply to the Commission's questionnaire on family planning the Pondicherry Administration has stated that two cases of death following sterilisation operation had been reported. In one case, death occurred within 10 days of tubectomy operation and it was decided to sanction *ex gratia* payment irrespective of the cause of death. In the other case, though complications leading to death could not be directly linked to tubectomy operation, the Pondicherry Administration took a sympathetic view and has approached the Central Ministry of Health and Family Welfare for clarification as regards the question of *ex gratia* payment.

21.309 The Pondicherry Administration has informed the Commission that one unmarried person and 520 persons having less than two children are reported to have been sterilised during 1975-76. No person above 55 years of age was, however, sterilised during that period.

General

21.310 A report on the implementation of the Family Planning Programme during the emergency followed by a few specific cases of alleged excesses in Delhi were taken up by the Commission for public hearing on July 7, 1978. Dr. Karan Singh, M.P., former Union Minister of Health and Family Planning, who was requested to assist the Commission appeared before the Commission and gave a prepared statement on July 7, 1978 which is reproduced below :

"The Commission is aware that with India's population growing at over a million a month, the urgency of taking effective steps to stem this massive increase has been evident for many years. When the portfolio of Health and Family Planning was entrusted to me at the end of 1973, Family Planning had been a centrally sponsored programme for almost 20 years and yet the sterilization performance for the year 1973-74 was only 0.94 million as against a target of 2.26 million fixed by the Planning Commission, and the growth reduction expected in the Fourth Plan had failed to materialize. Soon thereafter, a series of Cabinet meetings took place to finalise the Fifth Five-Year Plan and it was

decided to adopt as a national target the bringing down of the birth rate from an estimated 35 per thousand in 1974 to 25 per thousand by 1984, thus reducing the growth rate from 2.0 per cent to 1.4 per cent per annum. It was to the accomplishment of this target set in the Fifth Five-Year Plan, and endorsed by Parliament and the National Development Council, that the Ministry of Health and Family Planning directed its attention, and it was in an effort to achieve this that the National Population Policy was conceived and developed during World Population Year 1974 and 1975.

"2. Of the many unhappy consequences that flowed from the Emergency, perhaps none was so detrimental to the long-range interests of the nation as the distortions in the implementation of the National Population Policy. The policy itself, presented to the nation on 16 April 1976, was the product of prolonged and intensive consultations at various levels, governmental and non-governmental. There were detailed discussions with State representatives including a special Chief Ministers' Conference, because it was the States which were responsible for the implementation of the programme. There was also a series of meetings of the Cabinet Committee on Family Planning and of the Union Cabinet, and consultations with a number of non-official organisations and voluntary agencies working in the field of population control, academic institutions, individual demographers and economists. The policy that emerged was comprehensive and multi-dimensional, covering as it did a broad range of social, economic and political issues that have an effect upon population growth. It was not confined to what is popularly known as family planning, but covered such vital matters as raising of the age of marriage, freezing representation of States in Parliament, linking the distribution of federal resources to 1971 population figures, encouraging female literacy, introducing population values in the educational system, supporting research in reproductive biology and contraception, increasing the monetary compensation for sterilisation operations, and launching a massive multipronged and multi-media motivational campaign to cover all sections of society. For facility of reference I attach a copy of the National Population Policy as an Appendix to this note.

"3. While, as I reiterated at the World Population Conference in Bucharest, the path to family planning lies through the eradication of poverty, the attainment of the birth reduction target laid down in the Fifth Plan necessarily involved a substantial extension of contraceptive measures, in particular sterilisation. In a far-flung developing nation like ours with generally low economic and educational

standards, sterilisation has a distinct advantage over other methods of contraception because it is decisive and involves only a one-time motivation as against the continuing motivation and education necessary for IUDs and conventional contraceptives. Nonetheless we made it a point to stress the other aspects of the programme, specially the implementation of schemes for children and mothers under the Maternal and Child Health programme. Also on several occasions I pointed out that family planning should include helping childless couples to have children. A multi-media motivational campaign carefully aimed at various segments of the population and covering radio, television, the press, posters, pamphlets, folk media, etc. was worked out in great detail so that eligible couples could be more effectively motivated to voluntarily adopt the small family norm.

"4. The question is sometimes raised as to why targets for sterilisation were fixed at all. In fact this practice had been in vogue ever since the beginning of the family planning programme. Statistics show that in 1972-73 the sterilisation target was as high as 5.70 million, although the achievement was only 3.12 million. In 1976-77, the Ministry of Health and Family Planning adopted a reasonable and attainable target of 4.30 million after careful consultations with the State Governments based upon various norms including past performance and infrastructural availability. Unfortunately, during that year a number of States unilaterally raised their targets, some of them by almost 400 per cent. As has now been revealed, this led to widespread coercion and indiscriminate pressure in several States in order to achieve these enhanced targets. Here the whole question of incentives and disincentives is also relevant. The concept was not new, having been recommended by the Small Family Norm Committee as far back as 1966, and supported subsequently by several bodies including the Estimates Committee of Parliament in 1972-73. Under the National Population Policy incentives and disincentives were left to the discretion of individual States, as it was felt that in our federal system the socio-economic position varies considerably and the States which are the implementing authorities for the programme should be allowed flexibility in this regard. As it turned out, it was this loophole that was to a large extent responsible for the distortion of the programme. A number of States in the name of disincentives introduced certain punitive measures which acted very harshly upon their employees. As far as the Government of India employees were concerned, however, we took the precaution of discussing all such matters with the Joint Consultative Machinery and of giving adequate notice before introducing any new measures. An interesting case is that while hospitals under the Delhi

Administration imposed a fee of five rupees for every patient who had not undergone sterilisation, we refused to introduce any such measure in hospitals directly under the Ministry of Health and Family Planning.

- "5. With regard to the question of excesses, as Minister of Health and Family Planning I repeatedly stressed within and outside Parliament, as well as in letters to the State Health Ministers, that the Government of India was entirely against coercion, and urged that only eligible persons should be motivated and special attention paid to post-operational care. Despite this, when I realised that complaints were mounting, I invited Health Ministers from various States to meet me and personally appealed to them to ensure that excesses and coercion did not take place. Between the 10th October, 1976 and the 15th January, 1977 I met in this context the Chief Minister of Uttar Pradesh and the Health Ministers of Uttar Pradesh, Bihar, Punjab, Rajasthan, Gujarat and Himachal Pradesh. We did receive in the Ministry from Members of Parliament and others a number of complaints regarding coercion and harassment in the implementation of the family planning programme. As the records of the Ministry will no doubt confirm, when concrete complaints were received we made it a point of sending them to the State Governments and asking for their comments. As far as I can recall, the State Governments either did not reply or denied the allegations. Senior officials of the Health Ministry also visited several States and advised against coercion and sterilisation of ineligible persons. I must admit that the extent of such coercion was not revealed until after the Emergency was lifted, mainly because of the self-defeating censorship of the press that was enforced at that time. It will remain a matter of grave sorrow and personal regret to me that in the name of family planning Indian citizens, specially those belonging to the weaker sections of society, should have been humiliated in such a barbaric fashion.
- "6. From its inception family planning was an entirely voluntary programme, but the question of legislation to make sterilisation compulsory came in for mention in the National Population Policy which said that while there would be no Central legislation, if a State feels that the time is ripe and it is necessary to pass legislation for compulsory sterilisation, it may do so. While several States did send us draft legislation, the only one that took the matter up seriously was

Maharashtra. They first introduced what they called the Maharashtra Compulsory Sterilisation Bill 1976, but on the report of their Joint Select Committee and detailed discussions with the Ministry of Health and Family Planning it was considerably amended and presented as the Maharashtra Family (Restriction on Size) Bill 1976. After this was passed it was sent to us for approval. We had further discussions with representatives of the Maharashtra Government and sent a team of experts to study the infrastructural situation in the State. As a result of this the Act was once again amended, and finally came up to the Union Cabinet for approval. At the last minute, however, it was withdrawn on the directions of the former Prime Minister.

- "7. The manner in which the family planning programme was brought into disrepute by callous, overzealous and unimaginative implementation in some States has had serious consequences for the future welfare of the nation. While sterilisations during the year 1976-77 were almost double the target that had been set, the whole effort became self-defeating as it generated widespread revulsion in many parts of the country against the concept of family planning itself, thus giving a major setback to this vital national programme. As I have pointed out, the Ministry of Health and Family Planning over which I presided had never enhanced the sterilisation targets for 1976-77, nor at any stage advocated coercion. It could be asked as to why, despite this, the excesses took place at all. The answer is as clear as it is tragic. As the Commission is no doubt aware, at that time an extra-constitutional centre of power was operating in the country, and Chief Ministers—who owed special allegiance to this centre vied with each other in raising their sterilisation targets in order to gain favour. Once the targets were raised, the whole force of governmental machinery in those States was thrust into use to achieve them, and in the process an atmosphere of fear and coercion became widespread. Once again it was proved that howsoever desirable the ends may be, wrong means can lead to nothing but disaster."

21.311 A statement showing the target of sterilisation operations allotted to each State/Union Territory by the Government of India, targets as revised by the State Governments/Union Territories Administrations and the number of operations performed in each of the States/Union Territories during the years 1975-76 and 1976-77 is given in the Annexure to this Chapter.

ANNEXURE

STERILISATIONS—TARGETS AND ACHIEVEMENT

Name of State/U.T.	1975-76			1976-77		
	Target set by Government of India	Target as revised by State Government/U.T. Admn.	Achievement	Target set by Government of India	Target as revised by State Government/U.T. Admn.	Achievement
1	2	3	4	5	6	7
Andhra Pradesh	2,94,200	..	1,65,163	4,00,000	6,00,000	7,41,713
Assam	67,300	..	1,47,545	1,70,000	..	2,26,205
Bihar	2,02,500	..	1,65,531	3,00,000	6,00,000	6,80,000
Gujarat	1,82,400	..	1,53,000	2,00,000	3,78,240	3,17,000
Haryana	74,300	45,000 (With Central Govt.'s approval)	57,942	52,000	2,00,000	2,22,000
Himachal Pradesh	18,600	..	16,830	31,500	1,00,000	1,00,740
Jammu & Kashmir	7,000	..	9,502	31,000	..	15,794
Karnataka	1,39,000	..	1,20,671	2,44,500	6,00,000	4,88,861 (upto 28-2-77)
Kerala	1,48,400	..	1,56,622	2,22,500	..	2,06,600
Madhya Pradesh	1,63,800	..	1,12,000	2,67,500	7,00,000	10,01,000
Maharashtra	3,18,300	5,68,000	6,11,000	5,62,000	12,00,000	8,33,000
Manipur	1,600	..	847	4,500	..	6,286
Meghalaya	1,500	..	2,100	3,500	..	7,513
Nagaland	..	..	..	..	1,000	355
Orissa	1,09,200	..	1,25,040	1,95,500	4,62,000	3,22,984
Punjab	43,100	..	53,083	46,500	2,50,000	1,39,905
Rajasthan	1,06,100	..	86,000	1,75,000	3,50,000	3,64,760
Sikkim	..	..	..	..	..	262
Tamil Nadu	2,11,300	..	2,70,691	5,00,000	6,00,000	5,69,756
Tripura	3,400	..	4,140	9,000	10,000	12,600
Uttar Pradesh	1,75,000	..	1,28,000	4,00,000	15,00,000	8,37,000
West Bengal	1,96,100	..	2,06,421	3,92,500	11,00,000	8,80,000
Andaman & Nicobar Islands	200	..	242	500	1,300	1,376
Arunachal Pradesh	100	..	22	600	..	268
Chandigarh	1,300	..	1,163	2,000	..	2,590
Dadra & Nagar Haveli	350	..	241	600	630	695
Delhi	11,200	..	22,510	29,000	1,00,000	1,38,517
Goa, Daman & Diu	4,400	..	2,800	8,000	..	5,571
Lakshadweep	50	..	56	200	..	149
Mizoram	900	..	905	1,800	..	679
Pondicherry	3,400	..	4,688	5,300	7,300	8,030
TOTAL	24,85,000		26,24,755	42,55,500		81,32,209

CHAPTER XXII

Demolitions During Emergency

22.1 In Chapter XIII of the interim Report II, the Commission has dealt with demolitions in Delhi. Complaints regarding excesses and abuse of authority in this matter have been received from other States also. For want of time and due to various other constraints, it has not been possible for the Commission to enquire into all such complaints and bring them up for public hearing. However, the Commission had issued a detailed questionnaire on demolition to all State Governments and Union Territories seeking information on various aspects of the demolition programmes carried out in the States. Information has been received from all the States and Union Territories except the States of Assam and West Bengal. Governments of Jammu and Kashmir, Nagaland, Sikkim, Tamilnadu and the Union Territories of Andaman & Nicobar Islands, Arunachal Pradesh, Dadra & Nagar Haveli, Lakshadweep and Mizoram have sent replies stating that the information called for may be taken as 'Nil'. The replies received have been examined and the salient points noticed from these replies will be discussed at appropriate places in this Chapter.

22.2 Removal of Slums, unlawful encroachments and beautification of cities, roads and other areas is a problem which had been attracting the attention of Government for some time. However, no ruthlessness was shown in its implementation for achieving these. Attempts were also made to ensure that nobody was shifted unless some arrangement for his rehabilitation was already made. The entire concept in this regard suffered a drastic change after the emergency was imposed and demolitions by bulldozers of slums and the encroachments came to acquire the blessings of the Governments concerned. The speed and the scale of work in this direction surpassed all precedents and dwelling houses, shops, temples, and places of worship and homes of the poor were destroyed. There was a phenomenal increase in the number of demolitions during the period of emergency compared with the number of demolitions in the years preceding it. The Chief Ministers of the States started taking keen interest in the implementation of this programme. Some of the instructions issued by the different State Chief Ministers are mentioned below :—

- (a) The Chief Minister of Haryana, Shri Bansi Lal, in his D.O. Letter No. CMH-75/2211 dated 12th September, 1975 addressed to Shri R. S. Mann, Deputy Commissioner, Mohindergarh (and copies sent to all Deputy Commissioners) put utmost emphasis on the need for removal of encroachments in cities and exhorted that :

"This problem of the removal of the encroachments should be tackled on top priority basis."

- (b) In Himachal Pradesh the Council of Ministers in its meeting held on July 4, 1975 reviewed the measures included in the Economic Programme announced by the former Prime Minister on July 1, 1975, and while doing so directed that immediate action should be taken under the prescribed law against the persons who had encroached upon Government land. It was desired that weekly reports should be sent by the concerned authorities in this matter so as to keep the Chief Minister informed about the latest developments.
- (c) The Chief Minister of Karnataka directed the Public Works Department in particular to take immediate action to evict all persons who had encroached under DIR and take the help of the then local Deputy Commissioners and police officers in this connection. On September 5, 1975 the CM desired that programme should be completed within a period of one month and compliance be reported to him.
- (d) In Gujarat at a meeting of the Senior Officers held on May 27, 1976 under the Chairmanship of the Adviser to the then Governor of Gujarat, the Adviser emphasised the need for a vigorous drive for removal of encroachments on Government or Municipal lands on the same lines as those undertaken in several parts of the country consequent on the promulgation of the emergency and certain guidelines were formulated.
- (e) The State Government of Maharashtra considered that various existing legislative measures were not adequate to deal effectively and speedily with the situation and promulgated the Maharashtra Vacant Land (Prohibition of unauthorised occupation and summary eviction) Ordinance, 1975 which was later replaced by an Act on November 11, 1975 authorising the State authorities to remove summarily unauthorised structures and penalise those who trafficked in lands and hutments. The jurisdiction of the Civil Court was barred in respect of any action taken for the removal of unauthorised structure. Summary procedures were provided for.
- (f) Shri Harideo Joshi, the Chief Minister of Rajasthan, recorded the following minutes for removal of encroachments on Government land :

"Minister for local self-government may therefore, issue necessary guidelines to all the authorities entrusted with the removal of encroachment work to properly plan and execute the work in such

manner that the interest of weaker sections is safeguarded, if they are removed from present place of business or residence. But it should not mean that the work should in any manner be delayed on this account."

- (g) The State Government of Uttar Pradesh launched an intensified drive for removal of encroachments and to beautify some major cities of the State, which resulted in large-scale demolition in many parts of the State.
- (h) The Government of India, Ministry of Shipping and Transport (Road Wing), also issued a circular No. NH.III/P/24/75 dated April 1, 1976, addressed to all State Governments including Goa, Daman & Diu (Departments dealing with National Highways), where in it was stated that in the context of the present emergency the need for clearing the National Highways of all encroachments and thereby eliminating nuisance and accident prone spots and ensuring free flow of traffic... has assumed greater urgency and importance. In this circular, the view of the Law Ministry for taking action under Criminal Procedure Code, Indian Penal Code etc. was communicated for dealing with problems relating to removal of encroachments on National Highways.

22.3 There can be no objection to the basic concept underlying the removal of encroachments on public lands or utility places by unauthorized persons or where by resorting to demolitions the areas may be made more neat and clean, hygienic and beautiful. However, actions on these lines create many ancillary problems and any attempt at demolitions without considering the human problems created by such actions is bound to cause hardship. In such matters, decisions cannot be taken on impulse or in a spirit of competition with a view to showing higher numerical performance. Proper planning not only for undertaking such programmes but also for tackling the problems incidental thereto has to be done before any action on these lines is embarked upon. Taking advantage of the fear psychosis generated by the proclamation of emergency, the programmes for demolition were undertaken which caused considerable hardship and misery to the affected persons. At many places, police force was freely used in such operations and a number of structures were unlawfully and arbitrarily demolished.

22.4 As the discussion in Chapter XIII of the Commission's Interim Report II will indicate, the actions taken were ill-conceived and in certain cases cruelly inhuman. Thousands of people were uprooted after giving a few hours notice, often without any warning and without remedy or compensation. The demolition activities were carried out ignoring the misery caused to men, women and children. Their lifelong abodes were demolished with the aid of bulldozers and their belongings were thrown and strewn all over the area cleaned by such operations. They were forced to move to places where even the

basic necessities of life like light, water and transport facilities were not immediately available.

22.5 The Commission's earlier findings relating to demolitions in Delhi disclose that a majority of the operations were undertaken under the orders of Shri Sanjay Gandhi. The position in the other States, as subsequent discussions will show, was that they were undertaken to please Shri Sanjay Gandhi.

22.6 In one of the Telex messages sent by the then Resident Commissioner, Government of U.P. at Delhi, to the Commissioner and Secretary, Lucknow (with a copy to the Chief Minister), the following message was conveyed :

"As desired by the Chief Minister, I called upon Shri Sanjay Gandhi and showed him the various plans for urban development of Agra. Shri Gandhi appreciated the programme and expressed the view that with immediate effect the State Government should endeavour to remove cattle from the streets, unauthorized structures and beggars... He desires that the cleaning up of the city from stray cattle, unauthorised structures and beggars should be completed within the next six months so that during the cold weather which is the tourist season, the city presents cleaner appearance. He desires action on the same lines for Varanasi."

22.7 The Commission has received a number of complaints relating to unauthorised demolitions, display of high-handedness in execution of demolition operations and of resultant hardships and miseries. Such complaints have come from different States in the country. The State-wise break up of these complaints is as under :

Name of State/Union Territory	Total No. of Complaints	Cat. V	Cat. IV	Cat. III	Remarks if any
1	2	3	4	5	6
I. States					
Andhra Pradesh	75	16	10	49	
Assam	35	4	5	26	
Bihar	226	27	34	165	
Gujarat	18	1	1	16	
Haryana	300	29	62	209	
Himachal Pradesh	18	1	3	14	
Jammu & Kashmir	1	—	1	—	
Karnataka	126	29	41	56	
Kerala	63	3	9	51	
Madhya Pradesh	628	47	201	380	

1	2	3	4	5	6
Maharashtra	89	11	11	67	
Manipur	18	2	6	10	
Meghalaya	—	—	—	—	
Nagaland	—	—	—	—	
Orissa	251	25	39	187	
Punjab	66	7	14	45	
Rajasthan	193	10	35	148	
Sikkim	—	—	—	—	
Tamil Nadu	15	—	2	13	
Tripura	4	—	1	3	
Uttar Pradesh	425	58	96	271	
West Bengal	204	9	24	171	
<i>II. U.T. Adms.</i>					
Andaman & Nicobar Islands	—	—	—	—	
Arunachal Pradesh	—	—	—	—	
Chandigarh	4	1	2	1	
Dadra & Nagar Haveli	—	—	—	—	
Delhi	1248	16	244	988	
Goa, Daman & Diu	3	1	—	2	
Lakshadweep	—	—	—	—	
Mizoram	—	—	—	—	
Pondicherry	1	—	—	1	
<i>III. Ministries/28 Departments etc. of Central Government</i>	—	—	—	28	
TOTAL	4039	297	841	2901	

22.8 Those of the complaints which fell in Category V of the classification adopted by the Commission (and such complaints were 297 in number) were got investigated by the Commission through its investigating agencies. Such investigations have revealed that a large number of allegations made in such complaints are true. In some cases the allegations have been found to be 'partially proved'. However, as stated earlier, for want of time and various other constraints it has not been possible to hear these complaints publicly by this Commission. The result of investigations have been passed on to the appropriate authorities, Central Government/State Governments/Union Territories etc., for their consideration and necessary action. The State Governments in some of the cases have also been requested to consider the question of referring such complaints to the 'authority appointed by them for dealing with such complaints'.

22.9 The replies to the Commission's Questionnaire received from the State Governments have been analysed in the Commission's Secretariat and the salient features that have emerged from such replies are mentioned below :—

Demolitions in Bihar

- 22.10 (i) A new legislation entitled 'The Bihar Public Land Enforcement (Amendment) Ordinance' 1975, was promulgated by the State Government in December 1975. This contemplated removal of temporary encroachments etc. from the public land forthwith without the formality of advance notice and also use of force in cases where such structures were deemed prejudicial to public safety. By this Ordinance, Civil Courts were barred from interfering with the demolition operations. Subsequently the appellate jurisdiction in such matters were transferred to the Revenue Courts—in effect to the executive.
- (ii) In August 1976 a circular was issued making all the Collectors and Divisional Commissioners responsible for the success of the drive in this direction and also for coordinating, organising and helping the anti-encroachment operations of all the concerned departments. The Circular issued, *inter alia*, provided the following :—
- that a drive for removal of the encroachments should begin from October 1, 1976, everywhere;
 - all the Revenue Officers were vested with the powers of the Collector under the Bihar Public Encroachment Act, 1956, for passing necessary orders in regard to removal of the encroachments as and when required;
 - the concerned departments such as P.W.D., Irrigation, Housing Board, as also the District Boards and the Municipalities would submit their reports in respect of encroachments existing on their lands to the Revenue Officers concerned; and
 - a fortnightly report indicating the result of the follow-up action and the details of the lands freed from encroachments would be submitted by all Collectors.
- (iii) On October 18, 1975, all Collectors and Administrators District Boards were requested by the State Government to take effective measures to remove encroachments from the land of Zilla Parishads and submit a report to the State Government fortnightly.
- (iv) In major towns of the State, notices for demolitions were not issued as it was feared that this would invite interference from the Civil Courts. Announcements were generally made on public address system asking the encroachers to remove their structures voluntarily within a given time failing which the

Government agencies were to start demolition operations at the encroachers' cost on penal rate basis.

- (v) The armed police remained present to enforce the work of demolition and generally an element of fear attended the operations. Fear of arrest and detention under MISA and DISIR and more so the fear of financial penalties ruled out dissent in this matter.
- (vi) There had been one case of firing in the State in connection with the removal of encroachments at Agamkuan in Patna on August 12, 1976 when one person was killed and a number of persons including some police personnel were reported to have sustained injuries.
- (vii) Major demolition operations were carried out in towns like Patna, Simdega, Khunti, Ranchi and its adjoining areas. In Patna, some roadside small shops were removed in a peremptory manner. In Simdega, the shanty shops existing around Simdega Chowk were demolished and removed within 24 hours without any notice. In Khunti and Ranchi towns even small dwellings which the authorities had earlier recommended for settlement were not spared.
- (viii) In some cases the District Magistrates received direct orders from Patna to carry out such drives.
- (ix) In Madhubani and Darbhanga districts, intensity of the demolition operations was severe. At Madhubani, 249 shops were dismantled in a short time and at Darbhanga, a number of pucca shops were demolished. In Jugsalai and Bistupur markets in Jamshedpur, encroachers were removed without any prior notice. Similar drives were carried out in towns like Arrah, Sasaram, Aurangabad and Gaya.
- (x) According to the State Government, the 5-Point Programme of Sanjay Gandhi inspired "expanded activities" in respect of demolition programmes and the much publicised achievements made at Delhi and many places at U.P. caught the imagination of the then State Government.

Gujarat

22.11 In a meeting held on May 27, 1976 presided over by the then Adviser to the Governor of Gujarat, the following decisions, *inter alia*, were taken for removal of encroachments on Government and Municipal lands :—

- (a) Details of the operational approach adopted by the Delhi Development Authority and the Bombay Municipal Corporation should be obtained immediately. The most useful information that could be obtained from

the DDA and the DMC would be in regard to the distinction made by these authorities between those considered as entitled to allotment of alternative location and those not to be so considered;

- (b) A quick assessment was necessary of the alternate sites readily available for relocation of those who would be evicted from Government/Municipal lands;
- (c) The main thrust of the anti-encroachment drive should be in the cities of Ahmedabad, Surat and Baroda. In other urban and rural areas, the problems would be easier to handle; and
- (d) Everywhere in the State and, especially in major urban areas, new encroachments should be prevented and removed with vigour. All concerned departments of the Government and the Civil authorities would have to be vigilant in the matter.
- (ii) The following guidelines were formulated regarding demolitions;
 - (a) In respect of homesteads as have been in existence for sometime past, alternate sites should be offered but those which were in existence for less than two years, demolitions should be carried out without offering alternate sites but after giving reasonable notice to shift.
 - (b) Cabins, if they encroach on roads or fall within the prohibited adjacent areas, may be demolished after notice.
- (iii) A circular was issued conveying the decisions taken in the meeting on May 27, 1976, regarding lands that fell within the limits of the Municipal Committees and Municipal Corporations by the Panchayat Housing and Urban Development Department on July 1, 1976. However, the implementation of the circular was stayed as it was considered pre-mature because of the fact that the same was issued without obtaining necessary details from the Delhi Development Authority and Bombay Municipal Corporation.
- (iv) For maintenance of law and order during removal of the encroachments, help of the police was taken in cities of Ahmedabad, Surat, Morvi and Gondal.
- (v) In Morvi occupants were removed without giving any prior notice.

Himachal Pradesh

- 22.12 (i) The Council of Ministers in its meeting held on July 4, 1975 directed that immediate action should be taken under the prescribed law against the persons who had encroached upon government lands.

- (ii) Weekly reports were called for to keep the Chief Minister posted about the latest developments regarding demolition operations.
- (iii) It was decided that all Khokhas (temporary structures) unauthorisedly constructed on government land should be demolished. In some cases reasonable time limit was fixed for vacating such temporary structures.
- (iv) The Municipal Committee, Solan has reportedly spent Rs. 88,046 for the constructions of stalls and shops for rehabilitation of the encroachers.

Haryana

- 22.13 (i) Shri Bansilal, Chief Minister of Haryana and later on Union Defence Minister, during his visits to District Headquarters and meetings with the district authorities frequently asked them to give high priority to the demolition programmes. In few cases, on Shri Bansilal's direct intervention the district authorities are reported to have executed demolition programmes in callous disregard of rights of citizens and prescribed legal procedures. In one of his letters Shri Bansilal wanted Haryana to set an example in this field also.
- (ii) The Local Self Government Department of the Government of Haryana issued a circular No. 457-2(2)/76 dated January 29, 1976 in which it was mentioned that—

“alternative sites would be allotted only to those persons who are in legal occupation of a site and are affected as a result of the implementation of development schemes and schemes for widening of roads. No alternate sites was to be provided to those persons who were displaced as a result of removal of encroachments.”
- (iii) Fortnightly statements were called for from the Deputy Commissioners to know the progress in this matter. In such statements sent by the Deputy Commissioners to the Chief Minister's Secretariat, the only information asked for was the number of encroachments removed. The rehabilitation of the affected persons in such cases was not even considered.
- (iv) There was short-circuiting of the prescribed procedure in many cases. In Ambala District, 48 hours notice for removal of encroachments was given by beat of drums. In some other cases only 24 hours notice was given. In Karnal, no notice was issued at all for demolition in some cases.
- (v) In some cases in Karnal, demolitions were carried out even though the schemes requiring such demolitions had not been sanctioned.
- (vi) Police force was also used to assist demolition operations in many areas. The State

Government did not create any mechanism to look into the grievances of persons affected by the demolition programmes.

- (vii) In some cases of demolition of residential houses, alternative sites were given but no financial help was provided to the affected persons. In some cases even alternative site was also not allotted.
- (viii) In Hissar, for the widening of a stretch of Delhi-Sirsa road, the front portions of houses on both sides of that stretch of road were pulled down. Another landmark of Hissar, the Jain Public Library building which was located on the tri-junction of Delhi-Sirsa road, was also demolished for improving the traffic flow. The local officers in Hissar also opposed the demolition of Jani Ghar of the Sikhs and a deputation of local Sikhs met Shri Bansilal, who was the Defence Minister at that time, but no heed was paid to their request. These demolitions were carried out without due notice and no compensation was paid to the owners.
- (ix) In Yamunanagar, a large number of shops were demolished in utter disregard of the stay orders of the Punjab and Haryana High Court, causing heavy financial loss to a number of shopkeepers. The High Court of Punjab and Haryana in a civil writ petition filed by the complainants Shri Deepak Nanda and others of Haryana passed severe strictures on the Jamunanagar Municipality Authorities and condemned the arbitrary and high-handed manner in which the demolition operations were carried out in Jamunanagar areas during the night hours. The High Court observed that—

“... It is well settled that even the peaceful possession of a trespasser cannot be disturbed except by due process of law. It is not disputed by the respondents that the shops in dispute were constructed by the petitioners in the year 1968 and the alleged encroachments took place seven years prior to its removal by the respondent Committee. The petitioners were, therefore, in peaceful possession of the site in dispute and could not be dispossessed therefrom except by due process of law.”

“Moreover, the manner in which further action was taken and demolitions carried out can be hardly justified. A perusal of the records shows that no notice specifying the alleged encroachment and requiring its removal was served by the Administrator on the petitioners. There is also no material on the record to show if some Municipal authority even determined the extent of the alleged encroachments. ... Thereafter, the demolitions of the front portions of the shops

in dispute were carried out by the Municipal Engineer and that too during the night hours. I am, therefore, constrained to hold that the demolition of the front portions of the shops in dispute has been carried out by the Municipal authorities illegally and without due process of law."

Karnataka

22.14 (i) The Chief Minister recorded a note on September 5, 1975 wherein he emphasised the need for removal of encroachments and directed the Public Works Department to evict all encroachers under DIR within a period of one month with the help of local Deputy Commissioners and Police Officers. Failure on the part of any of the officers concerned was to be viewed seriously.

(ii) On October 16, 1975, all the Divisional Commissioners, the Deputy Commissioners, Presidents/Commissioners/Administrators of Corporations and Municipalities/Notified Areas, were asked to launch a drive to initiate action in regard to removal of encroachments in cities and towns particularly in congested shopping and business centres. Similarly, the Deputy Secretary to the Government of Karnataka, Public Works and Electricity Department (C & B), Bangalore, issued guidelines to the Chief Engineer (C & B), Bangalore, for removal of encroachments and unauthorised constructions within the road boundaries in the State.

(iii) Temporary structures were to be removed after giving one week's notice. Permanent buildings and structures were to be dismantled within 15 days. Structure like temples, mosques, churches, etc., were not to be demolished without specific orders of the Government.

(iv) The demolition operations were carried out in Karnataka under the provisions of the following Acts :—

- (a) Section 4, Section 5, Section 6, Section 10 and Section 12 of the Karnataka Public Premises (Eviction of Unauthorised Occupants) Act, 1974;
- (b) Section 33 of the Bangalore Development Authority Act, 1976;
- (c) Section 263, Section 263A and Section 267 of the Bombay Provincial Municipal Corporation Act, 1949;
- (d) Section 264, Section 264A and Section 404 of the City of Bangalore Municipal Corporation Act, 1949; and
- (e) Section 11, Section 12, Section 13 and Section 61 of the Karnataka Slum Areas (Improvement & Clearance Act), 1973.

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- (v) The State Government reportedly spent a sum of Rs. 7,300 in connection with removal of encroachments on road margins.

Madhya Pradesh

22.15 (i) On July 28, 1975 the Government of Madhya Pradesh issued a letter No. 711/CS/75, addressed to all the Collectors in which guidelines were laid down. These were :—

- (a) Deliberate encroachments by rich persons and businessmen should be removed without hesitation;
- (b) While removing hutments unauthorisedly constructed by the poor and the houseless, it should be seen that alternate arrangements on Government land are made; and
- (c) The Collectors should be alert against such officials and non-officials who encourage encroachments with corrupt motives.

(ii) The Madhya Pradesh Land Revenue Code (Amendment) Ordinance, 1975 (No. 25 of 1975) was promulgated on November 29, 1975. By Revenue Department's wireless message dated November 29, 1975, the District Collectors and Commissioners were informed that Section 248 of the Madhya Pradesh Land Revenue Code Act, 1959, had been amended to make necessary provisions for civil imprisonment to encroachers of Government lands and to give wide publicity to the same.

(iii) Vide Circular letter No. P-4-75-2832, dated November 6, 1975, the Panchayat and Social Welfare Department of the Government of Madhya Pradesh asked the Panchayats to make an effort to see that all the encroachers in the Panchayats areas remove their encroachments.

(iv) The hardship caused by the programme of demolition and removal of encroachments can be seen from Madhya Pradesh Government Circular No. 832/CS/75 dated August 21, 1975 in which the following complaints which had come to the Government's notice were communicated to the Collectors :—

- (a) Hutments were being removed during the rains and without arranging for alternate sites;
- (b) Structures erected on private lands were demolished without proper enquiry, especially those on the roadsides. This was done by PWD officials also without consulting the Revenue authorities;
- (c) Several structures, platforms, steps, etc. constructed over drains in cities were demolished without considering

the inconvenience of the people using them;

- (d) Platforms and projections of petty traders situated in front of their shops or over Municipal drains were removed without providing them any alternate sites for continuing their trade; and
- (e) In many cities debris of demolished houses were lying on roads, causing obstruction to traffic.

The Collectors were asked to remain vigilant and to ensure that no unnecessary hardship was caused to the people, especially to the weaker sections of the society.

- (v) The State Government has further reported that in execution of demolition programme, the provisions of law were generally bypassed. The practice was to call upon the encroachers to remove their encroachments by publication of warnings or intimation in newspapers or by informing them on the spot. These steps were taken, despite the existing instructions to regularise encroachments made prior to December 31, 1971 under certain conditions. In Madhya Pradesh, demolitions on encroachments on land on either side of the National Highway were carried out by service of less than 24 hours notice in many cases. Threats of arrest under MISA were also held out against those raising objections.
- (vi) In 17 Districts, residential houses and hutments were demolished without providing any alternative accommodation. In Bhind District, 26 houses were demolished but the alternate sites was allotted in only one case. In Chatrapur, 35 hutments were removed and alternate sites were provided only to 5 persons. It has been reported that in Ambikapur of Sarguja District, at the instance of the Collector, about 50 structures on the private land of ex-Maharaja of Sarguja were demolished by Government agencies in the rainy season without service of notice. No arrangements for rehabilitation of the affected persons were also made. No machinery was set up to look into the grievances of the persons whose houses, shops, hutments, etc. were demolished. 78 persons in Gwalior, 378 persons in Rewa, 58 persons in Seoni, 9 persons in Mandla and 248 persons in Hoshangabad reportedly lost their sources of livelihood due to demolition of their shops, Gumtias, hotels, etc.
- (vii) The police force was deployed at several places at the time when demolition operations were carried on.

Maharashtra

- 22.16 (i) The existing laws were not considered adequate to deal effectively and therefore

a new legislation as referred to earlier was introduced. The new Act came into force in Bombay Metropolitan Region on November 11, 1975, and was subsequently made applicable to Aurangabad, Nagpur, Kolhapur and Sholapur.

- (ii) On January 4, 1976, a census of hutment-dwellers on the lands which were in the control of the Government of Maharashtra at Bombay, was carried out and completed in a single day by putting on job about 7,000 persons for enumerating the slum dwellers in 850 colonies scattered all over Bombay. The results obtained by this census were as follows :

Land of Government	Land of Bombay Municipal Corporation	Land of Maharashtra Housing Board	Total
Pockets Huts 440	Pockets Huts 89,571 306	Pockets Huts 1,12,764 101	Pockets Huts 58,002 847 2,60,337

- (iii) The State Government formulated a new policy for protection, removal, rehabilitation and improvement of slum colonies and appointed on February 4, 1976 a Controller of Slums.

- (iv) The census of houses, etc., demolished in 5 cities revealed the following position :

City	Property demolished
Pune City	1285 huts and 29 shops.
Kolhapur City	111 huts.
Aurangabad City	319 houses, 41 shops, 269 huts and 2 other structures.
Jalna City	356 huts.
Bombay Metropolitan Region :	Break-up in respect of Government land
	Prior to census taken on January 4, 1976, 4649 residential and 484 commercial hutments were demolished.
City	Break up in respect of lands of the Greater Bombay Municipal Corporation and the Maharashtra Housing Board. 3292 hutments on Greater Bombay Municipal Corporation land, 102 hutments on the Maharashtra Housing Board lands were demolished. After the census in January 1976, 12,000 huts were demolished.

In Beed District

544 encroachments like tea stalls, book stalls etc. on roads were demolished.

- (v) Unauthorised hutments which came to notice after the census were demolished with 24 hours' notice and no alternative sites were provided in such cases.
- (vi) Police assistance was given in Greater Bombay, Pune, Osmanabad, Jalgaon, Kulaba, Chandrapur, Bhandra, Breed, Sholapur, Aurangabad and Kolhapur Districts.
- (vii) In Aurangabad 10 complete structures and parts of 81 structures, although originally constructed according to the prevalent Municipal Laws and Regulations, were demolished as the lands were required for road widening. In Kolhapur city 409 constructions were demolished for implementation of the projects like construction of markets, public gardens, playgrounds, roads and road widening works in accordance with the city development plans which were under execution.

- (viii) Compensation as under is reported to have been paid to the victims of demolition in Kolhapur and Aurangabad cities:—

	<i>Kolhapur City</i>
1975-76	Rs. 24,75,788
1976-77	Rs. 45,22,802
	<i>Aurangabad City</i>
1975-76	Rs. 4,49,576

- (ix) The Railways (Central Railway) demolished summarily about 400 longstanding huts at Ghatkopar without providing alternate accommodation and which was strongly objected to by the State Government. Similarly, the Defence (Army) took possession of some lands which were till then in possession of the Collector at Malad and by show-of force, compelled 1,669 hutment families to vacate without any alternate site. When the matter was taken up by the State Government with the then Defence Minister, the latter assured that such high-handed action would not be committed again.

Orissa:

22.17 (i) On April 23, 1976, the Revenue and Excise Department of the State issued a circular to the Secretary, Board of Revenue, Cuttack, all Revenue Divisional Commissioners, all Collectors, all Sub-Divisional Officers and Tehsildars expressing concern over large-scale encroachment on roadsides and advising the Field Officers to take effective steps for removing encroachments already existing and for preventing new encroachments. On June 14, 1976, similar instructions were issued by the Secretary, Board of Revenue, Cuttack, to all Collectors.

(ii) The State Government issued a letter No. 71851/R dated September 8, 1976 to the Secretary, Board of Revenue (with a copy to all Revenue Divisional Commissioners/all Collectors/Sub-Divisional

Officers and Tehsildars) conveying Government orders that:—

"The drive launched for removing encroachments on Government lands and communal holdings be stayed till the end of the October, 1976 because of rainy season."

On June 19, 1976, the State Government issued instruction to the Secretary, Board of Revenue, all Revenue Divisional Commissioners, all Collectors, all Sub-Divisional Officers and Tehsildars, etc. to launch a special drive for evicting encroachers on communal lands.

(iii) In Sambalpur Municipality 3 to 7 days' time was allowed for removal of encroachments. The Baripada Municipality allowed 7 days' time for removal of encroachments. In urban areas of Dhenkanal district, 15 days' notice was given but demolitions were actually taken up 3 months after the service of the notice. In Katabanji N.A.C. 36 hours' notice was given. In N.A.C., Rourkela where a portion of a pucca building constructed on the main road was demolished, more than one year and 5 months time was given before demolitions were actually carried out. 12 temporary structures in the Rourkela N.A.C area were also demolished after giving time for 27 days and 15 temporary structures were demolished after giving 10 days' notice. 171 persons in Cuttack Municipality area, 22 families in Puri Municipal area, 103 persons in Bhubaneswar Tehsil lost their sources of livelihood. No separate mechanism was evolved to look into the grievances or allegations of excesses in connection with the demolitions.

(iv) 130 pucca structures/verandahs, 9 Tea Stalls/restaurants/pan shops/vegetable shops/book stalls/cloth stores/fruit shops, 19 wooden cabins, 1 G.C. Sheet verandah, 12 Thatched premises and 29 shops were demolished by Cuttack Municipality. Most of the encroachers in the Jagannath Road Fund Land in Cuttack dismantled their structures and removed their belongings. The Cuttack Municipality spent Rs. 1,19,617 for removal of encroachments. The Cuttack Municipality constructed 125 shop stalls for rehabilitation of the encroachers. The Greater Cuttack Improvement Trust took up construction of 100 kiosks to rehabilitate petty shopkeepers and also constructed auxiliary market in Buxi Bazar to accommodate some of the affected shopkeepers.

(v) 5 houses, 41 platforms and projections and 17 shop rooms were demolished by Puri Municipality. Puri Municipality constructed 76 shopping centres for rehabilitation of encroachers. Sambalpur Municipality provided 38 permanent stalls to some needy and deserving persons. In Khurda Tehsil, 145 cabin-holders who were evicted were given alternative sites. In Bhadrak Tehsil, 72 persons were provided with alternative sites. In Dhenkanal district, 67 wooden cabins were rearranged suitably so as not to constitute an objectionable encroachment.

(vi) For maintenance of law and order, the help of Police force was taken during the demolition operations.

Punjab:

22.18 (i) On August 27, 1975, the State Government issued instructions to all the Deputy Commissioners in Punjab wherein the concern expressed by the Chief Minister of Punjab in the matter relating to demolition was expressed in the following words:—

"It has come to the notice of the Chief Minister that even after the issue of instructions by the Government time and again, the cases regarding removal of encroachments made on the lands falling within the limits of the Municipal Committees are being dealt with leniently owing to which the general public is experiencing great difficulties."

The Deputy Commissioners were, therefore, requested that the encroachments should be removed immediately and in future these should not be permitted within the limits of any Municipality.

(ii) The Secretary to the Government of Punjab Local Department addressed the Commissioners, Patiala/Ferozepur/Jullunder Divisions to issue immediate instructions to all the Deputy Commissioners in their jurisdiction to get the work regarding demolition completed on 'campaign' basis within 15 days. The defaulters in the matter, it was said, will be liable for disciplinary action.

(iii) The Joint Secretary to the Government of Punjab, Housing and Urban Development Department, put utmost emphasis in its communication of December 1, 1975, on the need for removal of encroachments and exhorted that the penal provisions of the Punjab Scheduled Roads and Controlled Areas Restriction of Unregulated Development Act, 1963, should be invoked against defaulters with utmost seriousness.

(iv) On March 19/26, 1976, the Deputy Commissioners and the Sub Divisional Officers were again told by Shri R. R. Bhardwaj, Joint Secretary to the Government of Punjab, Housing and Urban Development Department, to step up demolition programme.

(v) There were two major demolitions of unauthorised constructions in Bhatinda. One was of Cloth Market and other of Deraland near the Bus Stand in Bhatinda Municipal area. The unauthorised constructions were demolished in these areas with bulldozers on December 15, 1976. The case of these demolitions is reported to be pending in a court of law.

(vi) The Municipal Committees of Bretta, Muktsar and Fazilka spent Rs. 5.85 lakhs on the beautification of their respective towns from Municipal funds.

Rajasthan:

22.19 (i) On August 21, 1975, Shri Harideo Joshi, the Chief Minister of Rajasthan, asked the then Minister, Local Self-Government of Rajasthan to give guidelines to the authorities concerned on the task of removal of the encroachments and also to

ensure that the work is carried out in a manner that it does not impinge upon the interests of the weaker sections.

(ii) Demolition operations were carried out by different departments of Government in Rajasthan like Relief and Rehabilitation Department, Local Self Government, Public Works Department etc. Complaints of high-handedness in the execution of demolition programme were received from places like Jaipur, Udaipur, Ganganagar, Churu, Jodhpur etc. The total number of demolitions according to the State Government, were 15,889 which included wooden cabins, shops, pucca/kuchha verandahs and walls/chabutras. In Jaipur, construction attached to the temples of Ram Chanderji and Satya Narainji were removed as these were considered unauthorised. Three shops situated near the main gate of the temple of Hanumanji at Jaipur were also demolished by the Municipal authorities, Jaipur in utter disregard of the rules and regulations. The school buildings attached to Hanumanji temple were also demolished.

(iii) To implement the scheme for the construction of Sanjay Market (subsequently named as Municipal Market), the Municipality demolished a number of dwelling houses both kuchha and pucca without giving any notice to the occupants who were then rendered homeless. In some cases very short or totally inadequate notices were served upon the affected persons.

(iv) The State Government has reported the following irregularities and departures from prescribed rules and procedures:—

- (a) Notices giving very short time to the persons were issued;
- (b) In many cases, general notices were published in newspapers and individual notices were not issued;
- (c) In many cases though individual notices had been issued, these had not been served.

Uttar Pradesh:

(i) Drive for demolition in Uttar Pradesh was started on a large scale. Complaints of coercion and high-handedness by officers executing the demolition programmes were received from a number of districts including Allahabad, Kanpur, Lucknow, Varanasi, Agra, Meerut and other important places.

(ii) In his letter No. 8268N/92-75 dated December 20, 1975, the then Commissioner and Secretary, Government of Uttar Pradesh, informed all the District Officers of the U.P. that Governor had taken a very "serious view of illegal encroachments on Nazul land and other properties of the State and had ordered that every encroachment made or being made in the cities should be removed immediately".

(iii) The District Officers of U.P. were advised to take the following action in regard to the removal of the encroachments:—

- (a) Temporary encroachments should be removed positively by January 15, 1976 and Government should be informed of the action taken. In the case of other encroachments also, immediate and effective action should be taken, and wherever possible, encroachments should be removed by January 15, 1976, and information sent to the Government;
 - (b) In cases where it is necessary to regularise the encroachment, proposals in the proper form for regularisation of the same may be sent to the Government through the Divisional Commissioners;
 - (c) In cases where it is not necessary to regularise the encroachments, action should be initiated before January 15, 1976 under U.P. Public Lands (Eviction of Illegal Occupants) Act, 1972, to evict the encroachers. Every effort should be made to finalise the cases in which action has been initiated for eviction under the Act so that the encroachers could be removed immediately after a decision is taken;
 - (d) In cases of encroachments where action under Section 441 of the Revised IPC is considered fit and reasonable, such action should be initiated immediately.
- (iv) The U.P. Government took upon a large-scale the work relating to beautifying the important cities in the State. The Chief Secretary to the Government of U.P. issued instruction *vide* Memo No. 68427/H-4 dated November 10, 1975, in which he emphasised that for Lucknow city, the Chief Minister is keen for the beautification of the route from Airport to Secretariat and has directed that "the matter should receive immediate and sustained attention with a view to bringing about a radical and lasting improvement all round this route which is the first and quite often

the only impression of the capital city on the minds of the visiting dignitaries, both foreign and Indian". The steps taken by the Commissioner of Lucknow, U.P., included "ruthless clearing up of all the unauthorised structures." A loan of Rs. 31 lakhs was sanctioned to the Municipal Committee, Lucknow for widening and modernisation of all the important crossings.

(v) In Varanasi, large scale demolitions were carried out in an arbitrary manner by the Nagar Mahapalika, Varanasi. A number of residents were forced to demolish their buildings or parts of their buildings/boundary walls, some of which had been built very long time ago and whose plans had been duly approved by the then Municipal Board. Bulldozers were used by the Municipality in these demolition operations.

(vi) In Agra city, demolition programme from the point of view of beautification was carried out on a large scale. A sum of Rs. 71,87,088 was spent by the U.P. Government in this connection. Shri Sanjay Gandhi was associated with the decision for beautification of this city.

(vii) The Government of U.P. *vide* their letter No. UO-1240/A/11/7/76-55(63)/76-M.C. 5 dated September 1, 1976, sanctioned Rs. 35 lakhs for the widening of Mahatma Gandhi Road at Agra. The local authorities thereupon took up the work of beautification and removal of encroachment and this resulted in demolition of buildings and structures on an unprecedented scale on this road as well as Yamuna Kinara Road, Subhash Bazar, Balen Ganj and other areas.

(viii) The methods adopted for such purposes were harsh. No formal proceedings were initiated under the Land Acquisition Act. The owners were pressurised to demolish their buildings and to give in writing that they were voluntarily giving their lands to the Government.

22.21 Replies received from few other States do not contain anything of general importance and, therefore, these have not been included.

CHAPTER XXIII

Complaints and their Disposal with Reference to the Terms of Reference

23.1 As indicated in Chapter I of the Commission's Interim Report I, the complaints received by the Commission have been categorised as under:—

- (i) Complaints which do not fall within the purview of the terms of reference of the Commission to be filed and complainants informed accordingly.
- (ii) Complaints which do not fall within the purview of the terms of reference of the Commission but contains serious allegations to be referred to the Central/State Governments for inquiry and appropriate action.
- (iii) Complaints falling within the terms of reference of the Commission but not serious enough to warrant inquiry by the Commission itself—to be referred to the Central/State Governments with a request to have them looked into at an appropriate level and action as deemed fit taken thereon under intimation to the complainants.
- (iv) Complaints falling within the purview of the terms of reference of the Commission which are serious enough but cannot be handled by the Commission's staff itself—to be referred to the Central/State Governments for an inquiry by a committee/authority appointed under Section 11 of Commissions of Inquiry Act, 1952, and the findings and recommendations of authority to be submitted to the Commission for disposal as and when completed. The State Governments have also been requested to take whatever remedial action they deem fit in the meanwhile.
- (v) Selected complaints to be dealt with by the Commission through its own investigating agency.

23.2 The total number of complaints received by the Commission was around 48500. However, on scrutiny only 46261 were taken on record as complaints and the rest were found to be letters of miscellaneous nature, seeking clarifications, etc. All these complaints have been indexed. Of these complaints, 8432 were found to be not covered by the terms of reference. However, more serious of these, numbering 2150, were referred to State Governments, Union Territories, and Central Government departments for action as deemed proper by them.

The break-up of the remaining complaints is given in Table I below :—

TABLE I
Classification of Complaints for Investigation

Subject	Total number of complaints	Cat. V	Cat. IV	Cat. III	Remarks, if any
1	2	3	4	5	6
Abuse of authority/misuse of power, etc . . .	15990	312	1149	14529	
Misuse of powers of arrest or detention and maltreatment of detenus & other arrested persons . . .	6754	793	1712	4249	
Compulsion and use of force in Family Planning programme . . .	11046	940	3014	7092	
Indiscriminate, high-handed or unauthorised demolition . . .	4039	297	841	2901	
Total . . .	37829	2342	6716	28771	

LEGEND : Cat. V.—Inquired by Commission's officers.

Cat. IV—Referred to the State Governments/Central Ministries for inquiry and intimation of the findings to the Commission.

Cat. III—Sent to State Governments/Ministries for inquiry and disposal.

TABLE II(a)

Classification of Complaints State-wise

Term of reference : Abuse of Authority/Misuse of powers

Name of State/Union Territory	Total number of complaints	Cat. V	Cat. IV	Cat. III	Remarks, if any
1	2	3	4	5	6
I. States					
Andhra Pradesh . . .	479	24	31	424	
Assam	229	9	16	204	
Bihar	669	17	46	606	
Gujarat	234	2	8	224	
Haryana	708	30	74	604	
Himachal Pradesh . . .	137	1	8	128	

1	2	3	4	5	6
Jammu & Kashmir	28	3	4	21	
Karnataka	609	23	132	454	
Kerala	250	6	27	217	
Madhya Pradesh	1387	31	74	1282	
Maharashtra	940	27	31	882	
Manipur	13	1	..	12	
Meghalaya	7	..	..	7	
Nagaland	4	..	..	4	
Orissa	624	11	33	580	
Punjab	460	10	40	410	
Rajasthan	651	17	51	583	
Sikkim	6	1	..	5	
Tamil Nadu	267	4	25	238	
Tripura	43	1	3	39	
Uttar Pradesh	1874	38	173	1663	
West Bengal	399	5	30	364	
II. U.T. Adms.					
Andaman & Nico- bar Islands	16	..	2	14	
Arunachal Pradesh	18	..	1	17	
Chandigarh	27	..	4	23	
Dadra & Nagar Haveli	4	..	..	4	
Delhi	1797	49	153	1595	
Goa, Daman & Diu	13	2	2	9	
Lakshadweep	..	..	..	..	
Mizoram	1	..	..	1	
Pondicherry	5	..	2	3	
III. Ministries/De- partments etc. of Central Government					
	4091	..	179	3912	
Total	15990	312	1149	14529	

TABLE II(b)

Classification of Complaints State-wise

Term of reference : Misuse of powers of arrest or detention and maltreatment of detenus & other arrested persons

Name of State/ Union Territory	Total number of com- plaints	Cat. V	Cat. IV	Cat. III	Re- marks if any
1	2	3	4	5	6
I. States					
Andhra Pradesh	276	38	81	157	
Assam	138	20	38	80	
Bihar	457	45	114	298	
Gujarat	96	17	28	51	
Haryana	276	32	92	152	
Himachal Pradesh	26	3	11	12	
Jammu & Kashmir	7	2	3	2	
Karnataka	229	27	40	162	
Kerala	252	39	69	144	
Madhya Pradesh	1259	126	296	837	
Maharashtra	730	86	183	461	

1	2	3	4	5	6
Manipur	10	2	..	8	
Meghalaya	10	3	1	6	
Nagaland	5	5	..	..	
Orissa	224	42	65	117	
Punjab	159	29	40	90	
Rajasthan	155	20	32	103	
Sikkim	1	..	1	..	
Tamil Nadu	152	17	38	97	
Tripura	19	4	7	8	
Uttar Pradesh	1435	102	397	936	
West Bengal	126	19	33	74	
II. U.T. Adms.					
Andaman & Nico- bar Islands	12	7	1	4	
Arunachal Pradesh	..	..	..	..	
Chandigarh	4	1	1	2	
Dadra & Nagar Haveli	..	..	..	..	
Delhi	628	105	124	399	
Goa, Daman & Diu	7	2	3	2	
Lakshadweep	..	..	..	..	
Mizoram	1	..	..	1	
Pondicherry	..	..	..	..	
III. Ministries/ Departments etc. of Central Govern- ment					
	60	..	14	46	
Total	6754	793	1712	4249	

TABLE II(c)

Classification of Complaints State-wise

Term of reference: Compulsion and use of force in Family Planning programme

Name of State/ Union Territory	Total number of com- plaints	Cat. V	Cat. IV	Cat. III	Re- marks if any
1	2	3	4	5	6
I. States					
Andhra Pradesh	98	25	32	41	
Assam	280	15	40	225	
Bihar	255	46	38	171	
Gujarat	36	9	6	21	
Haryana	1507	67	521	919	
Himachal Pradesh	315	24	69	222	
Jammu & Kashmir	9	1	..	8	
Karnataka	210	42	40	128	
Kerala	34	..	1	33	
Madhya Pradesh	1477	80	333	1064	
Maharashtra	943	90	224	629	
Manipur	..	..	..	..	
Meghalaya	2	1	1	..	
Nagaland	1	..	1	..	

1	2	3	4	5	6
Orissa	36	6	12	18	
Punjab	212	22	54	136	
Rajasthan	570	77	170	323	
Sikkim	..	..	..	..	
Tamil Nadu	112	42	21	49	
Tripura	5	1	..	4	
Uttar Pradesh	3199	179	1107	1913	
West Bengal	273	11	39	223	
II. U.T. Adms.					
Andaman & Nicobar Islands	..	..	..	..	
Arunachal Pradesh	..	..	..	..	
Chandigarh	2	..	..	2	
Dadra & N. Haveli	..	..	..	..	
Delhi	1254	202	255	797	
Goa, Daman & Diu	..	..	..	..	
Lakshadweep	..	..	..	..	
Mizoram	..	..	..	..	
Pondicherry	..	..	..	..	
III. Ministries/ Departments etc. of Central Government					
	216	..	50	166	
Total	11046	940	3014	7092	

TABLE II(d)

Classification of Complaints State-wise

Term of reference:—Indiscriminate, high-handed or unauthorised demolition

Name of State/ Union Territory	Total number of com- plaints	Cat. V	Cat. IV	Cat. III	Re- marks if any
1	2	3	4	5	6
I. States					
Andhra Pradesh	75	16	10	49	
Assam	35	4	5	26	
Bihar	226	27	34	165	
Gujarat	18	1	1	16	
Haryana	300	29	62	209	
Himachal Pradesh	18	1	3	14	
Jammu & Kashmir	1	..	1	..	
Karnataka	126	29	41	56	
Kerala	63	3	9	51	
Madhya Pradesh	628	47	201	380	
Maharashtra	89	11	11	67	
Manipur	18	2	6	10	
Meghalaya	..	..	..	..	
Nagaland	..	..	..	..	
Orissa	251	25	39	187	
Punjab	66	7	14	45	
Rajasthan	193	10	35	148	
Sikkim	..	..	..	..	
Tamil Nadu	15	..	2	13	

1	2	3	4	5	6
Tripura	4	..	1	3	
Uttar Pradesh	425	58	96	271	
West Bengal	204	9	24	171	
II. U.T. Adms.					
Andaman & Nicobar Islands	..	..	..	..	
Arunachal Pradesh	..	..	..	..	
Chandigarh	4	1	2	1	
Dadra & N. Haveli	..	..	..	..	
Delhi	1,248	16	244	988	
Goa, Daman & Diu	3	1	..	2	
Lakshadweep	..	..	..	..	
Mizoram	..	..	..	..	
Pondicherry	1	..	..	1	
III. Ministries/ Departments etc. of Central Government					
	28	..	..	28	
Total	4,039	297	841	2,901	

The categorisation was done in a broad and general way and not strictly according to gravity or nature of the complaints. Thus, complaints of similar nature would be found in categories III, IV and V. The categorisation was undertaken by the officers of the Commission as soon as they were received and they were governed entirely at the time of the categorisation by the contents of the complaints and the impression the complaints had on the scrutinising staff. It is, therefore, not unlikely that certain cases of grievous nature might have come under category III and certain cases of a less grievous nature might have found their places in categories IV and V. The Commission's efforts all along have been to try and stretch itself and its operations as widely and comprehensively as possible so as to be able to touch upon the cases of as many complaints as it was possible under the circumstances. Towards this end, therefore, the Commission devised several steps.

23.3 One of the important segments of the written complaints received by the Commission consisted of the problems relating to the service personnel. Nature of this type of complaints varied from withholding of increments to summary dismissals and compulsory premature retirements. This subject has been dealt with in Chapter XVIII.

23.4 In the cases of the detenus, such of them who had suffered because of their arrests and who on that account might have lost their jobs, are reported to have been since reinstated. However, if there are still some cases left in this category, the Commission hopes that these would be attended to as early as possible.

23.5 The Commission has examined through its officials all the files relating to detentions Statewise and has recorded notes on the manner in which the MISA detentions were handled by the various State Governments. In these notes have been incorporated ample illustrations of specific cases of misuse of MISA by the authorities.

23.6 A separate Chapter has been written on the Conditions in the Jails. Unless and until there is a countrywide improvement in the jail conditions to bring them in tune with the latest concepts of treatment of delinquents, those who are sent to jails will continue to be treated in the manner in which they have all along been.

23.7 With regard to the complaints dealing with family planning, many State Governments have already given compensation to families where deaths had occurred following family planning operations. In response to a communication from the Commission, the State Governments and Central Ministries have replied that officials whose salaries had been withheld on account of non-fulfilment of family planning targets or their refusal to undergo sterilisation, had either since been paid or steps have been taken to release their salaries. Recanalisation has also been undertaken by the Governments concerned wherever affected persons have approached for the same. In extenuation of the irregularities and coercion indulged in by certain over-enthusiastic and misguided officials in the course of their frantic efforts to fulfil the unreasonable targets set for them, the Commission would like to say that it would be unfair to hold these functionaries entirely responsible for the disastrous consequences that followed. A good share of the blame has to be laid at the doors of the policy making levels who without providing the functionaries below, adequate resources, infrastructure and time, had set for them very steep targets. Nobody can dispute the importance and urgency of a programme like the family planning. The Commission, therefore, would only like to observe that though there have been a series of avoidable irregularities and wanton compulsion, the Commission would suggest to the Governments concerned to approach the problem insofar as it concerns the mistakes of officials in this regard in an understanding and sympathetic manner as long as the Governments are satisfied that no personal interest or gain was involved in the actions of the officials concerned with regard to the area and extent of his performance in the family planning programme. At the same time, the Commission would expect the Governments to extend to the victims of the family planning drive as much relief as is possible.

23.8 The complaints under 'Demolitions' had originated largely from Delhi, Uttar Pradesh, Haryana, Madhya Pradesh, Maharashtra, Orissa, Andhra Pradesh, Bihar and Karnataka. The bulk of the complaints were from Delhi. The Commission had heard in the course of its open sittings some of the important cases of demolitions which had taken place in Delhi. Considering the extensive nature of demolitions in Delhi and the number of people affected, the Commission felt that it was necessary for the Government to act expeditiously with a view to extending relief to the affected people. With this consideration in mind, the Commission had requested the Chief Secretary of Delhi Administration and also the Home Ministry, *vide* letter No. SC/Secy/1/77 dated December 21, 1977, to set up special cells to look into each complaint and take appropriate

ameliorative action as expeditiously as possible. The Commission has also addressed letters *vide* No. 31011/20/78-Coord/SCI, dated July 3, 1978, to all the Chief Secretaries of the concerned States to look into the demolition cases individually in an effort to see what steps can be taken to redress the grievances, if any, of the affected persons, without waiting for the complaints to be inquired into finally by the authorities concerned. If the suggestion of the Commission is implemented, as it hopes it would be, by the Delhi Administration and the other concerned State Governments, this would dispose of a very large percentage of complaints fruitfully. This would call for giving short shrift to the procedural delays and redtapism, if the Governments concerned are serious about giving relief to the affected people. This has necessarily to be a time bound effort if the programme is intended to be meaningful and ameliorative.

23.9 In the light of the foregoing, it may be pointed out that most of the complaints which fall under categories III, IV and V would have been got attended to in some form or the other through the various steps that the Commission has already taken. Such of the complaints which are still outstanding and have not come within the ambit of the various methods adopted by the Commission, would come to be attended to by the appropriate authorities who have been entrusted with the responsibility of looking into them under categories III and IV. Under category III, the State Government would, the Commission hopes, have attended to the various complaints and informed the complainants about the action taken by them. Under category IV, procedures adopted by the State Governments have differed from State to State. Some of the State Governments are getting it done expeditiously through the Departmental Heads, Divisional Commissioners, etc. In certain States, the Judges appointed as Authorities by the State Governments have functioned very expeditiously and have disposed of large number of complaints; but there are still certain States where the disposal by the authorities has not been as prompt as the Commission would have liked it to be. Position of disposal of category IV complaints as on August 1, 1978, is given in Table III below :—

TABLE III
Statement showing the position of category IV Complaints

Sl. No	Name of State/ Union Territory	Total number of complaints	No. of inquiry reports received	Remarks
1	2	3	4	5
1.	Andhra Pradesh	154	40	
2.	Assam	99	..	
3.	Bihar	232	..	
4.	Gujarat	43	..	
5.	Haryana	749	..	
6.	Himachal Pradesh	91	..	
7.	Jammu & Kashmir	8	..	
8.	Karnataka	253	131	

1	2	3	4	5
9. Madhya Pradesh	.	904	138	
10. Maharashtra	.	449	9	
11. Manipur	.	6	..	
12. Meghalaya	.	2	..	
13. Kerala	.	106	43	
14. Nagaland	.	1	..	
15. Orissa	.	149	..	
16. Punjab	.	148	..	
17. Rajasthan	.	288	53	
18. Sikkim	.	1	..	
19. Tamil Nadu	.	86	31	
20. Tripura	.	11	..	
21. Uttar Pradesh	.	1,773	2	
22. West Bengal	.	126	..	
23. Andaman & Nicobar Islands	.	3	..	
24. Arunachal Pradesh	.	1	..	
25. Chandigarh	.	7	1	
26. Dadra & N. Haveli	.	..	..	
27. Delhi	.	776	254	
28. Goa, Daman & Diu	.	5	..	
29. Lakshadweep	.	..	..	
30. Mizoram	.	..	..	
31. Pondicherry	.	2	..	
32. Ministries/Departments etc. of Central Govt.	.	243	110	
TOTAL	.	6,716	812	

If these complaints are not disposed of within a reasonable time, the whole effort would lose its point and purpose. The term of the Commission would expire on September 30, 1978. But the work of the several Authorities appointed by the State Governments would not be over by then. The Commission suggests that the Ministry of Home Affairs may advise the State Governments that reports submitted by the Authorities after September 15, 1978, may be disposed of by the State Governments themselves without sending them to the Commission. The Commission recommends to the Government of India that the Authorities, wherever appointed, should be requested to complete their labours by December 31, 1978, at the latest. If by then the work is not complete, the Commission suggests that the State Governments should take

over the remaining part of the complaints and get them looked into by the departments concerned with a view to giving such relief as is possible, even at that late stage, to the complainants, instead of letting them pend for any further period, which would do no good to anyone and certainly not to the complainants.

23.10 Under category V, 2,342 complaints were kept for investigation by the staff attached to the Commission. The disposal of these cases after investigation was done in the following manner :—

- (1) Some of the serious complaints were found fit for public hearing by the Commission. The considerations that generally governed the decision of the Commission in taking up cases for public hearings were :—
 - (i) whether the cases fall in a particular pattern; and
 - (ii) whether the cases were of a nature which created a crisis of national confidence.
- (2) Some of the cases which though found proved could not be heard due to constraints of time and other factors, were forwarded to the Ministry of Home Affairs along with a summary of findings and relevant papers with the request to transmit them to the State Governments/Ministries concerned. The State Governments/Ministries, it is hoped, would take appropriate action on these.
- (3) In some of the above mentioned cases which have sufficient importance, the State Governments were requested by the Commission to refer the matter to the State Authorities so that a fuller judicial investigation could be done into the same.
- (4) Cases which were found partly proved as a result of the investigation were also similarly forwarded to the Ministry of Home Affairs for onward transmission to the State Governments/Ministries for necessary action.
- (5) Cases which, as a result of the investigation, remained unsubstantiated and not proved in material particulars, were also sent to the Ministry of Home Affairs, for further transmission to the State Governments/Ministries for record.

In all these cases, the complainants were informed of the result of the investigation.

23.11 In a few cases, it was found that the complainants had already taken up the matter with a civil or a criminal court. In these cases, it was decided that the complaints are better left to the adjudication in the court of law. The State Govern-

ments were informed that in such cases they could deal with the petition/complaint after disposal of the cases by the court of law.

23.12 The results of investigation conducted by the officers of the Commission of category V complaints are given in the Tables below :—

TABLE IV (a)
Statement showing the position of category V Complaints
Term of Reference : Abuse of Authority/Misuse of powers

Name of State/ Union Territory	Total number of complaints	Proved	Partially proved	Not proved	Disposal by other methods*	Remarks if any
1	2	3	4	5	6	7
Andhra Pradesh	24	..	6	10	8	
Assam	9	..	..	6	3	
Bihar	17	8	..	2	7	
Gujarat	2	..	..	1	1	
Haryana	30	7	9	7	7	
Himachal Pradesh	1	..	..	1	..	
Jammu & Kashmir	3	..	1	..	2	
Karnataka	23	3	1	11	8	
Kerala	6	1	2	2	1	
Madhya Pradesh	31	1	2	22	6	
Maharashtra	27	3	3	16	5	
Manipur	1	..	1	..	..	
Meghalaya	..	..	..	..	..	
Nagaland	..	..	..	..	..	
Orissa	11	..	3	4	4	
Punjab	10	2	2	3	3	
Rajasthan	17	5	..	5	7	
Sikkim	1	..	..	1	..	
Tamil Nadu	4	..	1	1	2	
Tripura	1	..	..	1	..	
Uttar Pradesh	38	7	9	12	10	
West Bengal	5	..	1	4	..	
Andaman & Nicobar Islands	..	..	..	..	..	
Arunachal Pradesh	..	..	..	..	..	
Chandigarh	..	..	..	..	..	
Dadra & N. Haveli	..	..	..	..	..	
Delhi	49	32	4	5	8	
Goa, Daman & Diu	2	..	..	2	..	
Lakshadweep	..	..	..	..	..	
Mizoram	..	..	..	..	..	
Pondicherry	..	..	..	..	..	
TOTAL	312	69	45	116	82	

*Sent to Central Government Departments etc./State Governments for inquiry or for referring to the Authority.

TABLE IV (b)

Statement showing the position of Category V Complaints

Term of Reference:- Misuse of powers of arrest or detention and maltreatment of detenus and other arrested persons

Name of State/ Union Territory	Total No. of complaints	Proved	Partially proved	Not proved	Disposal by other methods*	Remarks if any
1	2	3	4	5	6	7
Andhra Pradesh	38	4	17	15	2	
Assam	20	2	..	13	5	
Bihar	45	14	9	20	2	
Gujarat	17	..	..	13	4	
Haryana	32	13	8	4	7	
Himachal Pradesh	3	1	2	..	..	
Jammu & Kashmir	2	..	..	..	2	
Karnataka	27	5	8	12	2	
Kerala	39	..	14	19	6	
Madhya Pradesh	126	4	27	61	34	
Maharashtra	86	5	9	63	9	
Manipur	2	..	2	..	..	
Meghalaya	3	..	..	1	2	
Nagaland	5	1	3	1	..	
Orissa	42	2	6	33	1	
Panjab	29	3	9	13	4	
Rajasthan	20	3	4	9	4	
Sikkim	..	..	..	..	..	
Tamil Nadu	17	1	1	12	3	
Tripura	4	..	1	..	3	
Uttar Pradesh	102	24	24	37	17	
West Bengal	19	2	3	12	2	
Andaman & Nicobar Islands	7	1	3	2	1	
Arunachal Pradesh	..	..	..	..	..	
Chandigarh	1	..	..	1	..	
Dadra & N. Haveli	..	..	..	..	..	
Delhi	105	24	30	33	18	
Goa, Daman & Diu	2	..	..	2	..	
Lakshadweep	..	..	..	..	..	
Mizoram	..	..	..	..	..	
Pondicherry	..	..	..	..	..	
TOTAL	793	109	180	376	128	

*Sent to Central Government Departments, etc./State Governments for inquiry or for referring to the Authority.

TABLE IV(c)

Statement showing the position of Category V Complaints

Term of Reference : Compulsion and use of force in Family Planning programme

Name of State/ Union Territory	Total No. of complaints	Proved	Partially proved	Not proved	Disposal by other methods*	Remarks if any
1	2	3	4	5	6	7
Andhra Pradesh	25	10	10	5	..	
Assam	15	3	..	11	1	
Bihar	46	11	9	22	4	
Gujarat	9	4	..	5	..	
Haryana	67	34	6	15	12	
Himachal Pradesh	24	3	4	15	2	
Jammu & Kashmir	1	..	..	..	1	
Karnataka	42	5	7	29	1	
Kerala	..	..	..	..	..	
Madhya Pradesh	80	8	11	57	4	
Maharashtra	90	27	5	48	10	
Manipur	..	..	..	..	..	
Meghalaya	1	..	..	1	..	
Nagaland	..	..	..	..	..	
Orissa	6	1	2	2	1	
Punjab	22	6	8	5	3	
Rajasthan	77	35	14	21	7	
Sikkim	..	..	..	..	..	
Tamil Nadu	42	1	7	31	3	
Tripura	1	..	..	..	1	
Uttar Pradesh	179	60	29	72	18	
West Bengal	11	1	1	9	..	
Andaman & Nicobar Islands	..	..	..	..	..	
Arunachal Pradesh	..	..	..	..	..	
Chandigarh	..	..	..	..	..	
Dadra & N. Haveli	..	..	..	..	..	
Delhi	202	73	33	68	28	
Goa, Daman & Diu	..	..	..	..	..	
Lakshadweep	..	..	..	..	..	
Mizoram	..	..	..	..	..	
Pondicherry	..	..	..	..	..	
TOTAL	940	282	146	416	95	

*Sent to Central Government Departments, etc./State Governments for inquiry or for referring to the Authority.

TABLE IV(d)

Statement showing the position of Category V Complaints.

Term of Reference : Indiscriminate, high handed or unauthorised demolition

Name of State/ Union Territory	Total No. of complaints	Proved	Partially proved	Not proved	Disposal by other methods*	Remarks if any
1	2	3	4	5	6	7
Andhra Pradesh	16	1	13	..	2	
Assam	4	..	..	4	..	
Bihar	27	21	2	4	..	
Gujarat	1	..	..	1	..	
Haryana	29	7	15	4	3	
Himachal Pradesh	1	1	..	..	..	
Jammu & Kashmir	..	..	..	..	..	
Karnataka	29	13	1	11	4	
Kerala	3	..	..	2	1	
Madhya Pradesh	47	20	8	16	3	
Maharashtra	11	..	1	10	..	
Manipur	2	2	..	..	..	
Meghalaya	..	..	..	..	..	
Nagaland	..	..	..	..	..	
Orissa	25	10	4	10	1	
Punjab	7	2	1	4	..	
Rajasthan	10	..	..	6	4	
Sikkim	..	..	..	..	..	
Tamil Nadu	..	..	..	..	..	
Tripura	..	..	..	..	..	
Uttar Pradesh	58	32	8	10	..	
West Bengal	9	3	3	3	..	
Andaman & Nicobar Islands	..	..	..	..	..	
Arunachal Pradesh	..	..	..	..	..	
Chandigarh	1	..	..	1	..	
Dadra & N. Haveli	..	..	..	..	..	
Delhi	16	14	2	..	..	
Goa Daman & Diu	1	..	..	..	1	
Lakshadweep	..	..	..	..	..	
Mizoram	..	..	..	..	..	
Pondicherry	..	..	..	..	..	
TOTAL	297	126	58	86	27	

*Sent to Central Government Departments etc./State Governments for inquiry or for referring to the Authority.

23.13 In all these enquiries conducted by the staff of the Commission, the Commission has refrained from making any observation on the conduct of individual officers against whom allegations have been made. This is because it has not been possible for the Commission to give an opportunity to the officials concerned to explain their points of view of the case in terms of section 8B of the Commissions of Inquiry Act. The Commission officials had only ascertained through their investigation whether or not, *prima facie*, there was substance in the allegations made in the petitions.

23.14 Paragraph 2(c) of the notification appointing this Commission runs as follows :—

“to recommend measures which may be adopted for preventing the recurrence of such abuse of authority, misuse of power, excesses and malpractices.”

The Commission has in the course of its hearings dealt with several cases and given its recommendations under this head at different places while dealing with specific cases. In addition, in Chapters XV and XXIV of the Report, the Commission has made certain observations and recommendations in this regard.

23.15 The procedures adopted by the Commission in the hearing of the cases has been set out in Chapter III of the Commission's Interim Report I. It was adopted as a practice not to have any counsel on behalf of the Commission at the first stage of the hearing of the cases. On behalf of witnesses, however, at the first stage of hearing of cases, counsels of witnesses, if any, were allowed to watch the proceedings and suggest questions to the Commission. The Commission was assisted in the first stage of the hearing of cases by the Government counsel only. Even the Government counsel's assistance was limited to his suggesting questions to the Commission who decided whether or not the suggestion should be accepted. A number of these were accepted and quite a large number of such suggestions were also turned down.

23.16 In addition to the actual hearing of the cases, the Commission had also elicited information through a series of questionnaires from State

Governments/Ministries on certain specific points which are related to the terms of reference. The information so collected by the Commission has also been incorporated in the relevant notes at appropriate places that figure in the body of this Report. The information collected on the basis of scrutiny of records undertaken by the staff of the Commission and on the basis of the replies to the questionnaires received from the State Governments/Ministries, has been factually reproduced without any comments from the Commission itself.

23.17 As has been pointed out time and again both in its Report and also in the course of its proceedings, the Commission is anxious that the ameliorative steps at the level of the Government concerned should get precedence over punitive action, if any, against any of the delinquent officers. In this connection, the Commission would like to reiterate that the punitive action should be strictly limited to such of the functionaries who may have stood to gain personally by committing the type of excesses that have been alleged and proved against them. This will need to be very carefully handled at the level of the State Governments and Ministries, if the punitive action contemplated is intended to be merely a deterrent without letting it degenerate into a campaign of demoralisation and vendetta.

23.18 The Commission has taped all the proceedings of the public hearings; 234 tapes are in the possession of the Commission. The Commission has tried to maintain a record of the newspaper reports on the Commission's proceedings extracted from the national newspapers in Hindi and in English. The tapes along with the paper cuttings will be handed over to the Ministry of Home Affairs for record.

23.19 The Commission would like to record here its very sincere appreciation of the cooperation that the Commission and its staff had received from Ministries to the Government of India, State Governments and Union Territory Administrators. The work of the Commission would not have proceeded so very smoothly, purposefully and expeditiously if it had not been for the consideration and cooperation which the Commission had received from all concerned without the slightest reservation.

CHAPTER XXIV

GENERAL OBSERVATIONS

24.1 The Commission has dealt with the different heads of the terms of reference relating to the Central and State Governments in separate Chapters. The observations of the Commission are intended to present a comprehensive picture of the manner in which the various State Governments and their employees at different levels functioned during the period of the emergency. Arbitrariness and reckless disregard of the rights of others and the consequent misery, which characterised a number of actions of the different public servants over a period of nearly 19 months, terrorised the citizens resulting in a complete loss of faith of the people in the fairness and objectivity of the Administration generally.

24.2 Among the abuses and misuse of authority by the administration, the one single item which had affected the people most over the entire country, was the manner in which the powers assumed by the Government to detain persons under the amended MISA were misused by the officials at various levels.

24.3 A large number of officers—District Magistrates and Commissioners of Police, who exercised the powers of District Magistrates ex-officio, obediently carried out the instructions emanating from politicians and administrative heads issued on personal or political considerations. Many of these officers who appeared before the Commission explained that in the circumstances that prevailed they had no alternative. In the light of the evidence concerning the conditions prevailing during the period of emergency, the Commission has generally accepted the plea of helplessness tempered by expressions of regret put forward by the detaining officers. This, however, does not minimise the basic fact that such conduct on the part of responsible officers is not in consonance with the best traditions of the services to which they belonged, and of the ethical considerations which must govern the exercise of powers involving deprivation of liberty, under an order based entirely on subjective satisfaction of the officers concerned without a trial and without affording an opportunity to the person detained or even his knowing what infraction he had, in the view of the official, been responsible for.

24.4 The Commission has also come across officers who having committed excesses at the behest of others—politicians or higher administrative authorities—have sought to defend patently indefensible conduct by suggesting that they had acted in good faith and in due compliance with the provisions of the MISA. Some of these officers did apparently a series of wrong things, being powerless to resist the pressures in the prevailing conditions and being afraid then of the consequences, if they were not to do what the politicians or higher authorities expected

ted or ordered them to do. They have now sought to justify their wrong conduct again presumably because of the fear of consequences. These officers who could not do the right thing during the emergency by resisting illegal pressures, did not do the right thing even after the withdrawal of the emergency. Not only that they made no attempt to atone for their past infirmity, they have in fact made vain attempts to justify their conduct. They could not display courage to face the truth then; they have not the character to face the truth now and to own up their past wrongs.

24.5 Though at the time of writing the Report the Parliament has already taken steps to repeal the MISA, the manner in which the MISA detentions were ordered by the detaining authorities at different levels during the emergency, should be a lesson to the people's representatives in the Legislature as to how a Statute, initially well conceived, may be misused for purposes totally alien to its objects and the intentions of its framers. It is time that some mechanism is devised to ensure that enactments, which confer on public servants powers exercisable on their subjective satisfaction and which interfere with the normal lives and activities of the citizens, are subjected to a periodical review by the framers themselves so that the spirit and motivation behind all such legislations are fully and completely honoured by those invested with power or authority under the Act. An enactment once it comes into the statute book should not be allowed to be forgotten. Its operation should be kept constantly under review. There should be built-in provisions to remind the framers and the public servants exercising authority under the statute, for periodical reviews by the legislatures so that the initial aims and objects of the Act are not perverted.

24.6 In several cases heard by the Commission, responsible officials admitted to the fact of large-scale fabrication of records concerning various individuals and matters to subserve the interests of a few. Considering the manner in which the MISA cases were dealt with by the detaining authorities which often involved large-scale fabrication of records, it is but proper that an effort should be made by the authorities at the Centre and in the States to devise means to ensure that these concocted records are not used again to the disadvantage or detriment of the individuals concerned. This has necessarily to be done; otherwise the very same records would over a period of time come to be invested with a degree of sanctity and authenticity which they often lack, and these very records may in future be ferreted out of the archives to support or to demolish an individual or a cause.

24.7 The Commission has referred to the conduct of the officers concerned with the administration, both at the Secretariat and in the field, in Chapter XV, para 20 of the Second Interim Report. In that context the Commission has observed that "imaginary fear of possible and probable consequences for doing the right things have done more havoc than the known consequences that actually may have followed the performance of duties on the right lines by the Government servants". The public servants have not infrequently unduly exaggerated the fear under which they were functioning during the emergency with a view to avoid the likely consequences of a decision which may have been contrary to the express or implied wishes of the political and administrative policy makers. In a number of cases, officials were almost anticipating the wishes of those in authority, however illegal, immoral and incongruous with the basic tenets of administration, such conduct on their part may have been. They have set out the excuse of undesirable consequences that were likely to follow, should they have dared to withstand the pressures from their superiors. In the process many of them have also stood to gain, may be even notionally, by being allowed to continue in offices which were to their liking and which may have yielded conveniences or comforts incidental to the office and undoubtedly welcome to the incumbent. It is a matter of concern to the Commission that the prevailing acts of impropriety and immorality were not considered improper or immoral by the authorities. It came to be accepted as a concept of a new propriety, and a new morality.

24.8 It must however be conceded, as it is clear on the evidence, that there was an all-pervading fear of consequences among the officials, which in many cases was indeed genuine, which inhibited many officials from acting in the only way which would have been conducive to the health of the administration primarily and of the nation generally. Commandments of good conduct, good behaviour and morality got muted when self-preservation was at stake. Considering the conditions under which the officials had to function in the State of Haryana, and the examples that have been brought on the record of the Commission by way of only a few of the many cases of wanton vindictiveness that were manifest in the actions of the Government of Haryana during the period of the emergency, it is necessary to point out the need to provide certain institutional safeguards to look after the interests of the entire run of officials, and particularly those who are involved at the decision making levels in the various departments of the Government in the States and at the Centre. When unscrupulous and unprincipled politicians and their associates are in a position to harm the public servants refusing to fall in line with wrong and illegal orders, it becomes necessary in the interest of the basic unity and integrity of the country, as also of the fundamentals of the Constitution and the rule of law, to protect the officials who are called upon to function at different administrative levels.

24.9 The case of Shri Ishwar Lal Chaudhary, Employment Exchange Officer at Bhiwani (Haryana) S/25 HA/78—30

who was ordered to be arrested on the spot and to be detained under MISA by Shri Bansilal when he had gone to Shri Bansilal's house to meet him on his arrival there, is a classic example which illustrates how an authoritarian Chief Minister's illegal and indefensible orders for detaining an innocent individual were carried out mechanically at the level of the District Magistrate without even the slightest pretence of satisfaction of the grounds for detention. It is true that it may have required more than a hero's courage for any District Magistrate to withstand the pressure from Shri Bansilal in the circumstances then prevailing. But it must leave an indelible blemish on the administration as a whole. The only fault of Shri Chaudhary was that he was registering for employment applicants who belonged to the districts neighbouring to Bhiwani in Haryana. Detention of an officer, who had a reputation for integrity, for not carrying out orders which were plainly unwarranted and which amounted to a flagrant and unpardonable misuse of authority by a politician, has a very important and telling lesson for the nation as a whole. This small functionary going about his job correctly, truthfully and fairly was made the victim of the wrath of a politician to whom apparently the only interest that mattered was his own and that of his son to the exclusion of the interests of the citizens of even a neighbouring district within his own State. If this instance is projected on the national scale, a political authority may decide to penalise an officer for tendering an advice or taking a decision the operational effect of which, albeit beneficial, transcends the territorial boundaries of the State to embrace the interests of the country as a whole. It needs hardly be emphasised that the public servants as a class, each in his own place and doing his own job, are expected to function in the interests of the country as a whole and not to subserve narrow, sectarian or regional interests of politicians.

24.10 The political system that our Constitution has given to our country is such that it contemplates parties with different political ideologies administering the affairs of the Centre and the State Governments. It is necessary in the interest of the territorial, political and economic integrity of the nation to ensure that the factors which contribute to such integrity are forever and continuously strengthened and not impaired. One such factor, and a very important and decisive one, is the body of public servants at various levels and particularly those at the decision making levels belonging to the different disciplines and functioning in the States and at the Centre. If the basic unity and territorial integrity of the country is to be emphasised at the political level it is imperative to ensure that the officials at the decision making levels are protected and immunised from threats or pressures so that they can function in a manner in which they are governed by one single consideration—the promotion of public well-being and the upholding of the fundamentals of the Constitution and the rule of law. The Government ought to ensure this, if necessary, by providing adequate and effective safeguards to which the officials may turn if and when necessary against any actual or attempted threats by the political and/or

administrative authorities to sway the officials from performance of their legitimate duties.

24.11 In the light of the overwhelming and disturbing facts that have come on the record of the Commission, to refuse even to look at the administrative failures to the strains of which the Nation has been exposed and to pretend that everything has been right with the administrative apparatus save a few minor aberrations by a few wayward officials is, to evade the issue. It is hoped that the authorities both at the Centre and in the States, will look at some of the cases in which aberrations have been pinpointed by the Commission and many others on which the Commission has got investigations done through its officials and forwarded the reports to the respective Governments for further necessary action, in a spirit of honest enquiry to determine what went wrong not only in each individual case but generally and how a similar situation can and should be averted in the future. It is necessary to face the situation squarely that not all the excesses and improprieties committed during the emergency originated at the political level. In a large number of cases it appears that unscrupulous and over-ambitious officers were prepared to curry favour with the seats of power and position by doing what they thought the people in authority desired. The solutions to the various problems that would inevitably get thrown up must in its nature be complex, but the right solutions may be found if the exercise is undertaken at various levels with a steadfast desire and determination to reach them.

24.12 Exhortations have in the past often been addressed by political leaders that public functionaries must be committed servants of the Government. These have in no small measure been responsible for some of the serious consequences that had followed certain steps taken by the Government servants during the emergency. The commitment of a public functionary is, however, to the duties of his office, their due performance with an accent on their ethical content, and not to the ideologies, political or otherwise, of the politicians who administer the affairs of the State. Commitment by the public servants, therefore, means only and entirely, commitment to the policy and programmes of the Government insofar as the policy and programmes are in conformity with the fundamentals of the Constitution. Anything beyond these fundamentals should be construed to mean as falling outside the scope and the purview of the commitment. The Nation has given to itself a democratic form of Government and the administrative set up must function in a manner fulfilling the demands of that form of Government in the context of our developing society. Public servants of the different departments have responsibilities, special and peculiar to their respective functions and charter of duties, and the orientation of these responsibilities must be to the programme of social and economic change set out by the Government, but within the constraints of the rule of law in a democratic society. This orientation should on no account extend to the politics of the party and/or of the individuals in power. But during the period of the emergency the public ser-

vants were expected often to orient the performance of their duties not to the rule of law but the desires and dictates of the politicians and the administrative heads. In many cases the administration and administrators ceased to be insulated from politics with disastrous consequences. It may be observed that all the safeguards and lofty principles of administration would be of no avail if the officials concerned are impervious to the value sensitivities of established and accepted administrative norms and practices. It is, therefore, imperative that the public servants should adhere strictly only to their commitment to the programme of the party in power which should be in consonance with the provisions of the laws and the Constitution without in any way compromising with the principle that public servants have to be politically neutral at all levels and at all times. Unless the Services work for and establish a reputation of political neutrality, the citizens will have no confidence in the impartiality and fairness of the Services. It is expected of the Services that they would tender frank, informed and well-considered advice without getting personally involved in their present position or their future advancement, however, unpalatable such advice may be to the political head of the Ministry.

24.13 It would serve some useful purpose if the views of the Government on this point are set out unequivocally and in a manner which would enable the different Government functionaries to function without inhibition, maintaining at the same time the highest standards of administrative propriety. The Government's primary responsibility is to guarantee protection to those officials who refuse to deviate from this code of conduct which should be accepted not only by the officials but also by the political authorities. If there is sincerity at the political level about the need for and the desirability of a non-political and programme-oriented administrative machinery, the time is ripe for reaffirming these principles and ideals in a manner that there is no ambivalence about the intentions of the Government in relation to the Government servants. Any dichotomy in this regard is an invitation to the unscrupulous among the officials to ride the bandwagon in the hope of temporary personal benefits or concessions. If the administrative set up in the country in its largest and most comprehensive sense is to settle down to a spell of clean, efficient and purposeful functioning, the Government must encourage its establishment to function freely and fearlessly and yet within the framework of established disciplinary principles, making it clear that deviations from established procedures without justification would be dealt with severely. Such an understanding between the Government and the decision making levels alone would prevent the administrative set up from being exploited by unscrupulous careerists who lack the patience to wait for their legitimate claim in the services, and place in the scheme of things.

24.14 The Commission has viewed with concern the evidence relating to the enormous power that was wielded by the lower functionaries like Shri R. K. Dhawan, Shri R. C. Mehtani, Shri Navin Chawla and some others. It is necessary for the Government to appreciate the need for defining the

various functions and powers of the several lower functionaries who are in close proximity to the seats of power. The Commission views the developments in this regard with great concern, for power came to be exercised by some of these lower functionaries without the requisite authority and the accountability that goes with it. Power and responsibility must generally go together. During the emergency, the political component of Government in quite a few important cases came to be divorced from the channel of communication. The result was that powers came to be wielded by the Special Assistants or the Private Secretaries in the name of and on behalf of the Ministers, and the people at the receiving end of the orders were left with no option but to carry out their orders without even having any facility or the desire to verify the authenticity and the authority of the orders emanating from the lower functionaries attached to the Ministers. This style of functioning at higher level of the Administration has indeed taken a toll of the liberty and careers of countless people. The Government should define as precisely as it is possible, the circumstances under which the personal staff including Special Assistants and the Private Secretaries attached to the Ministers could convey orders. The Government should also provide checks and safeguards to ensure that in the event of doubt or difference of opinion the levels receiving the orders from the Ministers are in a position to check back and satisfy themselves that the orders in fact had emanated from the source in whose name the orders were issued. Unless every level of the Government starting with the political component and going down the line is animated by one and the only desire to function within a democratic set up with the ultimate aim and object being only to be able to look after the interests of the common man, there is no hope that we in this country will be able to graduate ourselves from mere words to the real core of democracy.

24.15 The trend in the democratic Governments today is in favour of more and more open functioning of the Government with less and less accent on secrecy. It has been established that more the effort at secrecy the greater the chances of abuse of authority by the functionaries. In this regard there has been some serious re-thinking in certain foreign countries on the Acts and related matters governing the official secrets. It is suggested that the Government may take into consideration the present trends in this regard in the democratic countries and avail of the benefit of their experiences for such action as may be feasible, practicable and desirable in the context of our own peculiar needs and conditions.

24.16 During the emergency, 25,962 public servants were compulsorily retired. The Commission had addressed letters to all the State Governments and the Ministries of the Government of India requesting them to undertake a review among other things of all the cases of compulsory retirement. As a result of this review, 14,187 public servants have been reinstated. The figures speak for themselves. If such a large number of employees could be reinstated following a review of their cases, it only means that in most, if not in all of these cases of pre-

mature retirement, the guidelines laid down for premature compulsory retirement had not been followed strictly and in accordance with the spirit of the rules. The conclusion also follows that if this review had not been undertaken either at the instance of the Commission or otherwise, the unfortunate public servants who suffered injustice for extraneous reasons would have continued to remain under a cloud and consequent ignominy. It is necessary to devise adequate and appropriate safeguards to ensure that powers available to the Government to prematurely retire an employee are not arbitrarily used without any scope for redressal of his grievances should the employee feel that he has been unjustly and prematurely retired. Any such safeguard provided should be capable of functioning in a manner that it is able to dispose of the review or appeal within a stipulated time. Adoption of "droit administratif" on the French model is one of the safeguards for looking after the interests of the employees of the Government which may be profitably considered.

24.17 Interpretation of the happenings during the emergency merely as an essay in certain unrelated transactions called excesses indulged in by an individual or a group of individuals, would be wholly a misinterpretation, if not a total travesty of facts. What happened during the emergency was the subversion of a system of Administration. The lament of Commander Dutta about the 'gutless administration' while referring to the Administration in Haryana is an understandable condemnation of the attitude of the Government servants contributing significantly to the subversion of the system. If a recurrence of this type of subversion is to be prevented, the system must be overhauled with a view to strengthen it in a manner that the functionaries working the system do so in an atmosphere free from the fear of the consequences of their lawful actions and in a spirit calculated to promote the integrity and welfare of the Nation and the rule of law. This will call for considerable heart-searching both at the political and the administrative levels. Both the groups, during the period of the emergency, sadly deviated from their respective and legitimate roles of duty, trespassing into each other's areas with the consequences that are there for all to see and many to lament. If the officials on the one side and the politicians on the other do not limit their areas of operation to their accepted and acknowledged fields, this Nation cannot be kept safe for working a democratic system of Government. Unless this realisation dawns upon the Government and the people in all its serious implications specially for the future, the labours of the Commission would be in vain. The Commission has examined the various transactions, not with the primary object of finding fault with the actions therein, not for cataloguing the human frailties, but to extract a lesson for the future. The process of reformation and rejuvenation especially in the field of administration will have to be speeded up bringing it in tune with the ethos of our Nation which alone would prevent a recurrence of the type of maladministration and misuse of power and authority as had occurred during the emergency. Unless this awareness permeates all strata of our society, even with the best of intentions, possible

recurrence of this type of tragedy may not be prevented.

24.18 The Commission has had occasion to peruse the findings of the earlier Commissions appointed by the Government at the Centre and in the States to probe into the conduct of the Ministers of the State Governments—particularly the reports of Shri S. R. Das who inquired into the conduct of late Shri Pratap Singh Kairon, Chief Minister of Punjab (1963-64), Shri Rajgopal Iyengar who inquired into the conduct of late Shri Bakshi Ghulam Mohammed, ex-Chief Minister of Jammu & Kashmir (1965-67), Shri Venkatrama Iyer who inquired into the conduct of certain Ministers of Bihar (1967-70), Shri Madholkar who looked into the affairs of the Ministry of Shri Mahamaya Prasad Sinha, Chief Minister of Bihar and other Ministers (1968-69), Shri A. N. Mulla who looked into the affairs of the Ministers of Kerala—S/Shri Govindan Nair and T. V. Thomas (1969-71)—and Shri G. K. Mitter who looked into the Kendu leaves purchases in Orissa (1973-74). The Commission is not aware of the action taken, if any, in response to these Reports submitted from time to time in regard to the Minister—Civil Servant relationship. The fact, however, remains that the refrain in all these Reports in so far as this concerns the relationship of the Ministers with the Civil Servants, is the same. One cannot but be struck by the near-unanimity in the observations of the several Commissions on the unhealthy factors governing the relationship between the Ministers and the Civil Servants. Yet nothing seems to have been done, at any rate effectively, to set right such of the aspects of these relationships which, prior to the emergency, had contributed to the several developments which came in for indictments by the Commissions. In the light of this, it

may be easy to conclude that what happened during the emergency is merely a tragic culmination of the particular trend that had been identified and condemned from time to time by the Commissions of the past. The Commission owes it to the citizen of India to emphasise that appointments of Commissions by themselves are not enough if the Governments concerned do not follow up and implement at least such of the recommendations as are avowedly accepted by the Government. Unless the Government is prepared to apply the corrective principles in the Minister—Civil Servant relationship effectively and with a determination to produce the desired results at different levels and within the several components of the Government, the agonising impact of this unfortunate malaise would be felt by the common man in the streets, in the villages, in the factories and in the far distant corners of this vast country.

24.19 As borne out by the records of the Government and the depositions of several responsible Government servants, dishonesty and falsehood became almost a way of official life during the emergency. As Robert Frost said, "most of the change we think we see in life is due to truth being in or out of favour". If administrative machinery in our country is to be rendered safe for our children, the Services must give a better account of themselves by standing up for the basic values of an honest and efficient administration. That alone can resurrect the people's lost faith once again in our Services. If a democratic heritage is to be left for future generations, we should want the truth again to be enshrined in its legitimate place in the social, economic and political scheme of things in our country. There is nothing unattainable or profound in this. It is a simple human message.

CHAPTER XXV

Conclusion

25.1 The proceedings of the Commission have now been completed. The Commission has been selective in the matter of hearing cases in open session. It was impossible for the Commission to take up for hearing every complaint. It was not because the Commission did not appreciate the gravity of the allegations made by aggrieved persons against concerned officials. But looking to the vast number of complaints lodged before the Commission if every complaint was to be heard in open session, it would have been impossible for the Commission to reach any findings within any foreseeable future. Working on an average of six hours a day in open session and throughout the year without any break, even Sundays and holidays included, would still have meant that the enquiry would take several decades to dispose of all the complaints which totalled close upon 48,000. For that reason, the Commission suggested that the State Governments should appoint authorities under the Commissions of Inquiry Act for the purpose of hearing and disposing of the complaints primarily with a view to grant relief to complainants who on the evidence were found to be persons deserving of relief against injustice done to them and flowing from arbitrary or improper conduct by the officials of the State or their associates. All the States have adopted the suggestion. Some States have appointed sitting judicial officers or retired judicial officers to hold enquiry. In some other States, administrative authorities have been appointed to hold the enquiry. In some States, according to the information available, the work of the Commission under the authorities has progressed far and is nearing completion. Unfortunately, in some States it has either not commenced or it is still in the initial stage. The Commission trusts that the proceedings will be disposed of as expeditiously as possible and latest by December 31, 1978.

25.2 It would be necessary for the authorities also to adopt a selective process. Where it may appear that remedial or compensatory process may help the victim and the authority is satisfied about the genuineness of the complaint, recommendations in that behalf can be made.

25.3 The Commission held 100 sittings in open session. A number of witnesses have been examined and two Interim Reports have already been submitted.

25.4 The Commission greatly appreciates the services rendered by the officers and others attached to the Commission. Officers of the Commission have made the necessary field investigations without any considerations of personal inconvenience and have submitted admirable summaries of the investigations made by them, together with the evidence collected by them. But for the assistance rendered by the officers who cooperated with wholehearted involvement, it would not have been possible for the Commission to complete the inquiry within a comparatively short period of a little over one year. All officers attached to the Commission have rendered service to the utmost of their capacity to the Commission and they have worked as a unified team. The officers from the very nature of selection made had to belong to different cadres—some of them Police Officers, some Administrative Officers and some Officers of the Income Tax Department. But in carrying out the investigations, they have acted as parts of a single mechanism, their sole objective being to make the investigation effective and to present the cases before the Commission without delay. The Commission records with appreciation the services rendered by all the officers. It would be invidious to single out and name the investigating officers for any special mention.

25.5 The services rendered by Shri P. R. Rajgopal, Secretary to the Commission, have been outstanding. He has not only supervised the entire investigating process but has been familiar with every case investigated by the investigating staff and has been able to furnish the requisite information at a moment's notice. The expeditious disposal of the working of the Commission and the merits of the work, if any, are largely due to the work done by him, and to which the investigating officers have contributed in no small measure.

25.6 I may also mention that the staff involved in the transcribing and copying of the record have done a tremendous job. Apart from the efficiency displayed in copying and transcribing, when it was necessary, some of them worked till 2.00 a.m. in the night so as to complete the work so that the copies required for the Commission may be available. All the officers and staff deserve high praise for the single-minded devotion to duty that they have exhibited in the discharge of their functions at various levels.

CHAPTER XXVI

SUMMARY OF FINDINGS, OBSERVATIONS AND RECOMMENDATIONS

Interim Report I

CHAPTER I

It contains terms of reference, information regarding the Commission's staff, method followed by the Commission, for categorisation of complaints and how the Commission proceeded to start its work.

CHAPTER II

The text of the proclamation of emergency and some important statutory provisions made after such proclamation have been given in this Chapter.

CHAPTER III

The procedure followed by the Commission and the decision given by it on the objection raised regarding the procedure followed have been incorporated in this Chapter. The important findings in this regard are :—

- (i) The proceedings of the Commission are neither of the nature of a civil suit nor are the proceedings of the nature of a criminal proceeding. (Para 3.4)
- (ii) Functions of the Commission under the Commissions of Inquiry Act are of an entirely different nature. The Commission is not concerned with the establishment of any civil rights or the infraction of those rights. The Commission is also not concerned to determine the infraction of any laws involving the imposition of any penalty upon a person charged with the commission of infraction of a law. The proceedings are not of an adversary character. The duty of the Commission is to make an inquiry into the subject matter of the enquiry if the subject matter is of definite public importance. (Para 3.5)
- (iii) The proceedings before the Commission will be of the nature of 'inquisitorial' (meaning thereby that the presiding officer takes upon himself the duty to ascertain the facts through witnesses after giving opportunity to persons concerned who may be affected by the determination of facts). (Para 3.10A)
- (iv) There is no warrant for the view that once a notice under section 8B is issued, there is no obligation on the part of the Commission to issue a notice under rule 5(2)(a)

nor that the issuance of the notice under rule 5(2)(a) is dispensed with, when summons under section 8B is issued.

(Para 3.14)

- (v) The proceedings before the Commission are such in which truth is to be determined by the adoption of a procedure to be devised by the Commission having regard to the nature of the enquiry and which is essentially inquisitorial in character as prescribed by the Act. (Para 3.16)
- (vi) The Commission rejected the contention that the appropriate procedure should have been that as soon as a witness appeared before the Commission at the stage of preliminary hearing and made some statement which involved a person in the commission of some impropriety, the Commission was bound to issue summons under section 8B and the Commission had no option to act otherwise. (Para 3.18)
- (vii) Under rule 5(2)(a) the Commission is under a statutory obligation to call upon persons who in the opinion of the Commission, should be given an opportunity of being heard, to furnish to the Commission a statement relating to such matters as may be specified in the notice. This obviously could not mean that even though a person is given an opportunity of being heard in an enquiry, he should not be called upon to furnish to the Commission a statement relating to the matters as may be specified in the notice. (Para 3.20)
- (viii) Section 8B confers the basic protection to any person that he shall not be condemned unheard by the Commission, i.e. his conduct should not be adversely commented upon by the Commission, i.e. his version is not true, without giving him an opportunity of being heard. (Para 3.24)
- (ix) The proceedings of the Commission are not analogous to proceedings in a civil trial or enforcement of a civil right or obtaining relief for infringement of a civil right nor of a criminal trial in which the conduct of a person or persons for the commission or infraction of the law is sought to be investigated. The function of the Commission is to determine facts relating to matters of public importance and by adoption of a procedure, which is not adversary in character, but inquisitorial in character. (Para 3.28)

- (x) Oath of secrecy of office taken by a Minister of the Union does not prohibit a Minister from disclosing the information before a Commission of Inquiry specially when the Central Government has directed the holding of an enquiry for the purpose of ascertaining facts relating to matters of public interest.

(Para 3.31)

- (xi) The disclosure of information before a Commission of Inquiry held in pursuance to a direction of the Central Government after a person has ceased to be a Minister does not amount to a breach of the oath of secrecy of the Minister concerned.

(Para 3.31)

CHAPTER IV

In this Chapter the Commission has mentioned the scheme of the report along with brief mention of the types of instances and activities taken up for examination. In this regard, the general principle kept in mind by the Commission has been that the excess complained of must be of a nature which would be capable of creating a crisis of confidence or which is one of national importance.

(Para 4.4)

CHAPTER V

Circumstances Leading to the Declaration of Emergency on June 25, 1975

- (i) Following the Judgment of the Allahabad High Court setting aside the election of Smt. Indira Gandhi, there was a spurt of political activity in Delhi in particular and in the rest of India in general.

(Para 5.2)

- (ii) Apparently, an effort was made by the followers of Smt. Indira Gandhi to create an atmosphere that she should continue to remain and function as Prime Minister and with that object in view a number of demonstrations, rallies and meetings were arranged by her supporters in Delhi and elsewhere.

(Para 5.3)

- (iii) Instructions were given in a meeting held at Raj Niwas, Delhi, that full cooperation should be given by the DTC by arranging buses to carry people who were taking part in rallies to be organised to express solidarity to the then Prime Minister.

(Para 5.6)

- (iv) The practice of making an application in the prescribed proforma for hire by a private party and making of advance payment was not observed by the DTC in the case of the bookings made by the AICC.

(Para 5.6)

- (v) The number of buses booked during the period June 12 to 25, 1975, on hire was much above the normal booking allowed for private purposes.

(Para 5.6)

- (vi) On June 13, 1975, the entire fleet of 983 buses plying on the Delhi routes was

taken off the road and the buses were diverted to converge on the Prime Minister's house. Residents of Haryana, Punjab, Rajasthan and Uttar Pradesh were sent in vehicles commandeered by the State authorities for the purpose..... A large majority of those vehicles coming from the adjoining States did not observe the Route Permit Rules required under the Motor Vehicles Act, and in many cases Government vehicles were used for which no payment was made.

(Para 5.7)

- (vii) Records of the DTC clearly support the evidence of the witnesses that Government employees were pressed into service for organising these rallies.

(Para 5.8)

- (viii) Government organisations like Delhi Transport Corporation, New Delhi Municipal Committee and Delhi Electric Supply Undertaking participated in these rallies.

(Para 5.9)

- (ix) Under the Motor Vehicles Act route permits had to be obtained for sending vehicles outside the Union Territory of Delhi which was not done..... The police authorities and the State Transport authorities had been properly briefed and instructed to ensure that the buses crossed the border without any route permits.

(Para 5.12)

- (x) The State of affairs in this regard was not different in Punjab.

(Para 5.19).

- (xi) From the State of Rajasthan also, according to the Rajasthan State Electricity Board records, 58 trucks belonging to the State Electricity Board were ordered by the Chief Minister to be placed at the disposal of the Workers Union.

(Para 5.21)

- (xii) Some of the employees of the DESU who refused to participate in these rallies were allegedly beaten up by the more enthusiastic amongst the supporters of the Prime Minister.

(Para 5.24)

- (xiii) the law was also discriminately applied to the Congress Party as against the other parties. Enforcement of prohibition of meetings under section 144 of the Cr. P.C. which had become a normal feature in the vicinity of the Prime Minister's house was relaxed when it came to demonstrations and rallies arranged by the Congress Party in support of the Prime Minister.

(Para 5.26)

- (xiv) The Intelligence Bureau of the Government of India was being used to maintain surveillance on the activities of some of the important Congress leaders and Ministers... This raises a very important issue which has relevance to the assault on the privacy of the individuals and even of Ministers of Government for purposes which are

other than those strictly necessary for ensuring the security of the State.

(Para 5.27)

- (xv) The decision to take certain drastic steps including the declaration of emergency was, apparently, in contemplated even as early as June 22, 1975. (Para 5.29)
- (xvi) Efforts were also made to ensure that some important newspapers were prevented from bringing out the morning edition on June 26, 1975. (Para 5.43)
- (xvii) In varying degrees the Chief Ministers of several States were taken into confidence as early as the morning of June 25 and they had been instructed to take action on receipt of the advice from the Prime Minister's house that night. (Para 5.46)
- (xviii) Some of the special features which could have a bearing on the proclamation of the emergency as gathered from the official records are as follows :—
 - (a) On the economic front there was nothing alarming ;
 - (b) The fortnightly reports regarding law and order showed that the situation was under complete control all over the country ;
 - (c) No reports were received by the Home Ministry from State Governments indicating any deterioration in the law and order situation in the period immediately preceding the proclamation of emergency ;
 - (d) No plans were prepared by Home Ministry prior to June 25, 1975 with regard to the imposition of Internal Emergency ;
 - (e) The Intelligence Bureau had not submitted any report suggesting that the internal situation in the country warranted imposition of internal emergency ;
 - (f) The Home Ministry did not submit any report to the Prime Minister expressing its concern or anxiety about the internal situation in the country ;
 - (g) The senior officers like the Home Secretary, the Cabinet Secretary and the Secretary to the Prime Minister had not been taken into confidence about the intended proclamation of emergency but Shri R. K. Dhawan, the then Additional Private Secretary to the PM had been associated with the preparations for promulgation of the emergency right from the early stage ;
 - (h) Shri Om Mehta, the Minister of State was taken into confidence much earlier than the Home Minister, Shri Brahmananda Reddy. Only some of

the Chief Ministers and Lt. Governor of Delhi were taken into confidence regarding the imposition of emergency. (Para 5.60)

- (xix) It is not understood how provision (clause da) of the Second Schedule of the Government of India (Transaction of Business) Rules, 1961 read with Rule 7 of these rules could have been circumvented by the application of Rule 12 of the same Transaction of Business Rules. (Para 5.65)
- (xx) The work relating to the emergency provisions of the Constitution, relates to Home Ministry and therefore the proposals relating to the proclamation of emergency should have normally originated from that Ministry. The Cabinet Secretariat, however, did not receive any proposals from the Home Ministry in respect of the proclamation issued on June 25. (Para 5.66)
- (xxi) Even in 1971, when a war was being waged with Pakistan, a proclamation of emergency was issued without invoking Rule 12 of the Transaction of Business Rules. A regular meeting of the Council of Ministers was convened and the proclamation was issued thereafter after obtaining clearance from the Home Minister. (Para 5.67)
- (xxii) The circumstances leading to the declaration of emergency pursuant to the advice of the Prime Minister leave little room for doubt that the decision to impose emergency... was exclusively the decision of the Prime Minister. None of her Cabinet Ministers, except Shri Brahmananda Reddy was even aware of the proposal.....even Shri Brahmananda Reddy, Home Minister, was not consulted; but he was merely informed shortly before the advice was tendered and his assistance was taken only for obtaining a letter from him.... (Para 5.68)
- (xxiii) The Constitution, in the opinion of the Commission, does not contemplate the proclamation of an emergency upon an emergency already existing, nor prevents the courts from entertaining any challenge to the declaration of this additional emergency. But the provisions of the Constitution were amended by the 39th Amendment of Constitution Act, which prevented a challenge being raised. (Para 5.69)
- (xxiv) This was more in the nature of a shock treatment, than a legally permissible emergency, which could be declared according to the law then in force. (Para 5.70)
- (xxv) If, however, an internal emergency could be declared apart from the external emergency, the powers which were exercised before any Rules were framed, i.e., disconnecting the electricity connections of

newspaper offices were wholly unauthorised, since there was no law which conferred upon any authority such power. Again, the action taken by the authorities under the directions of the Prime Minister to arrest a number of political leaders was not supported by any law. (Para 5.71)

(xxvi) Surveillance of political leaders and others including tapping of their telephones raises a grave issue of public importance. . . . Such a power, if at all, could be exercised only when authorised by statutory provisions and circumstances strictly necessary for ensuring the security of the State in grave times either of internal disturbance or external aggression or war and not at other times. (Para 5.72)

(xxvii) It would certainly be a travesty of the democratic institutions if the Government constituted by a political party is entitled to watch the activities of other political parties and even of other members of its own party. If, however, such power is to be conferred on this institution (Intelligence Bureau), it must be by a statute or statutory Rules authorising it in that behalf. . . . This watch of the Intelligence agency on individuals and the materials collected thereby should be open to scrutiny to a Board or a Panel composed of officers or of public men before authorising the continuance of the watch. It should be possible to harmonise the demands of the security of the State with the democratic liberties. (Para 5.73)

(xxviii) Considering the stakes that are involved in the proper and purposeful functioning of the I.B., it is imperative that it gets the benefit of advice, guidance and wisdom of a body of eminent, experienced and patriotic group of individuals drawn from different discipline and whose loyalty and personal integrity cannot ever be called into question. This in turn will generate the requisite faith and confidence of the citizens of the country in this very important institution on the fair, correct and proper functioning of which alone would eventually depend the safety, the security and the liberty of the people of this country. (Para 5.74)

(xxix) The Intelligence Bureau should not be entitled to act as a super-watchman over the activities of politicians to whatever party they belong and the activities of the Intelligence Bureau should be subject to regulation and control insofar as these activities concern some of the clandestine parts which have come to the notice of the

Commission, to ensure that this does not degenerate into misuse or abuse of authority. (Para 5.75)

(xxx) The Commission recommends that appropriate safeguards are necessary and should be devised by the Government so as to protect the activities in the Intelligence Bureau being used as an instrument of political spying either by the Government or by some one in the Government. This issue has been raised to concentrate attention and if considered appropriate to generate public debate on the question. (Para 5.78)

(xxxi) It is also necessary to invite attention to the misuse of Air Force aircraft. It appears that for the benefit of individuals for travelling on State duty or for State work Indian Air Force aircraft have been used surreptitiously and, according to the existing Rules, those persons were not entitled to the use of the Aircraft. The Commission recommends to the Government the framing of appropriate Rules in this behalf and also to scrutinise whether the use of the Aircraft on June 25, 1975 in the circumstances was warranted and, if not, whether bills for charges appropriate in that behalf were duly tendered and, if not tendered, to identify those responsible for breach of the Rules. (Para 5.79)

(xxxii) Attention may also be invited to the gross irregularities to which the provisions of Maintenance of Internal Security Act and provisions of the Defence of India Rules were misused to the detriment of political opponents. (Para 5.80)

(xxxiii) The manner in which the provisions of MISA were used was nothing short of perversion and mockery of its provisions and all the safeguards and guarantees that had been promised in the Parliament when the MISA Bill was enacted, were totally disregarded. Many apprehensions, which were expressed by the Members of Parliament, who spoke against conferment of such wide powers when the Bill was enacted, came true. (Para 5.81)

(xxxiv) The safeguards enshrined in the enactment were rendered meaningless by the callous misapplication of this Act by the police and the Magistracy. . . . It needs to be made clear to all those responsible for overseeing the correct application of the powers of arrest/detention by the junior officers, that the senior functionaries at the bureaucratic and political levels would be held directly accountable for any misuse or abuse of the powers of arrest and detention. (Para 5.82)

CHAPTER VI

The working of the Media of Information under the Information and Broadcasting Ministry during the emergency

I. Censorship

- (i) During the two or three days when the censorship apparatus was being set up, power supply to the newspaper offices in Delhi remained disrupted. (Para 6.10)
- (ii) The guidelines issued by the Chief Censor exceeded the scope of the Rule 48 of the Defence and Internal Security of India Rules insofar as they prevented editors leaving editorial columns blank or filling them with quotations from great works of literature or from national leaders like Mahatma Gandhi, or Rabindranath Tagore. The Information and Broadcasting Ministry did not attempt to find out whether these guidelines were within the scope of Defence and Internal Security of India Rules or not. (Para 6.14)
- (iii) Parliament and court proceedings were also subject to censorship. (Para 6.17).
- (iv) Not merely publication of court judgements was censored, but directions were also given as to how judgements should be published. (Para 6.23)
- (v) The actual work of censorship on day to day basis went even beyond the scope of the guidelines. Orders were arbitrary in nature, capricious and were usually issued orally without any relation to the provisions of Rule 48. (Para 6.29)
- (vi) In practice censorship was utilised for suppressing news unfavourable to the Government, to play up news favourable to the Government and to suppress news unfavourable to the supporters of the Congress Party. (Para 6.30)
- (vii) In one instance at least, that of the magazine 'Mainstream', pre-censorship orders were issued particularly because of its critical attitude towards Shri Sanjay Gandhi. (Para 6.31)
- (viii) Even after the elections were announced and censorship was relaxed, the Government tried to pressurise the Press by giving informally 'off the record' warnings by veiled threats of what would happen to them after the elections if they did not comply with the directions of the Government.... (Para 6.37)
- (ix) During emergency, legislation was enacted to make censorship part of the ordinary law of land. Thus the Prevention of Publication of Objectionable Matter Act was passed, the Press Council of India was abolished by an

Ordinance and a Bill repealing the Parliamentary Proceedings (Protection of Publication) Act, 1956 was passed. (Para 6.45)

II. Other pressures on the Press

- (i) Shri Shukla at a Coordination Committee meeting held on June 29, 1976, had asked the Principal Information Officer to prepare a list of newspapers which were to be categorised as friendly, neutral and hostile. (Para 6.47)
- (ii) The grading of friendly, neutral and hostile given to a particular newspaper was related to its views on a particular political party. (Para 6.48)
- (iii) Political consideration was one of the criteria for giving advertisements. (Para 6.54)
- (iv) Contrary to the policy enunciated by the Government on the Floor of Parliament, political considerations were taken into account while releasing advertisements. (Para 6.57)
- (v) The Government during this period utilized its advertising policy as a source of financial assistance to newspapers or denial of financial assistance etc. in complete variance with the policy which it had enunciated on the Floor of the Parliament. (Para 6.58)

III. Formation and functioning of Samachar

- (i) The functioning of Samachar during the emergency both administratively and editorially was supervised by Government. (Para 6.75)
- (ii) Accreditation of a number of correspondents was terminated and a bulk of these decisions was taken as a part of review. (Para 6.79)
- (iii) Shri K. N. Prasad also admitted to having character and antecedents of a number of journalists verified by the Intelligence Bureau at the instance of the Minister. (Para 6.81)

IV. Functioning of Government media units

- (i) The Government media units had two main functions during the emergency. They were at once a source of patronage and also they were used for building up the image of political party and a few of its leaders. (Para 6.84)
- (ii) The D.A.V.P. was used on a large scale for giving advertisements to support the various souvenirs brought out by the Congress Party. Opposition parties were denied any such patronage. (Para 6.85)
- (iii) Not merely the Congress Party was given extensive advertising support, but there was an instance when rates per page for souvenirs were increased after they had been agreed upon and the souvenirs printed. (Para 6.86)

- (iv) The slant against the Opposition was so obvious that in December 1976, AIR bulletins devoted 2,207 lines to the spokesmen of the Congress Party as against 34 lines to the Opposition. (Para 6.90)
- (v) After the change of criteria three part-time Correspondents were appointed to AIR, all of whom were office bearers of the Congress Party. (Para 6.96)
- (vi) A number of films were produced by the Films Division to project the image of Shri Sanjay Gandhi not only as a Youth leader, but as a leader in his own right. (Para 6.101)
- (vii) A number of multi-media campaigns were launched during the emergency to coincide with important milestones in Smt. Gandhi's careers. (Para 6.105)
- (viii) The Publications Division was directed to boost the sales of Smt. Gandhi's books and to publish informative and interesting sketches with photographs of Smt. Gandhi in various journals and periodicals. (Para 6.105)

CHAPTER VII

SPECIFIC CASES

I. Case regarding the reversion of Shri Justice Aggarwal of Delhi High Court

- (a) The order passed against Shri Aggarwal was, *prima facie* in the nature of an order of punishment for participating in the hearing in Kuldip Nayar's case and passing an order which tarnished the image of the Government in the public eyes. (Para 7.13)
- (b) A case of misuse of authority and abuse of power is disclosed in this case against Smt. Indira Gandhi. (Para 7.14)

II. Refusal by Smt. Indira Gandhi to extend the term of Shri Justice U. R. Lalit of Bombay High Court

Refusal to extend the term of Shri U. R. Lalit as a Judge of the High Court amounted to subversion of well-established conventions and practices and amounted to abuse of authority and misuse of power by Smt. Indira Gandhi. (Para 7.23)

III. Deviation from established procedure and irregularities in the appointment of Shri K. R. Puri as Governor of the Reserve Bank of India

The normal and established procedure in regard to the appointment of the Governor of the Reserve Bank of India was not followed and that the then Finance Minister Shri C. Subramaniam was virtually compelled to fall in line with the suggestion made by the then Prime Minister Smt. Indira Gandhi. This was yet another case of subversion of established

administrative procedure and convention by Smt. Indira Gandhi as the Prime Minister. (Para 7.37)

IV. Subversion of lawful processes and well-established conventions and deviation from administrative procedures and practices in the appointment of Shri T. R. Varadachary as Chairman of the State Bank of India

- (i) The Commission gave a ruling that by giving any information before it, Shri Mukherjee would not be violating either the provisions of the Official Secrets Act or the oath of office taken by him. (Para 7.45)
- (ii) In the light of the consistent practice and in the light of the nature of the oral testimony of Shri Sen Gupta and Shri Mukherjee, the Commission is of the view that there was no consultation with the Reserve Bank in this case, as was required in terms of sub-clause (a) of sub-section (1) of section 19 of the State Bank of India Act, 1955. (Para 7.45)
- (iii) The normal established procedure in regard to the appointment of the Chairman of the State Bank of India was not followed in this case and further that it was not in accordance with the provisions of the State Bank of India Act, 1955, which made consultation with the Reserve Bank of India a condition precedent to the appointment of the Chairman by the Central Government. The Commission is of the view that considerations other than strictly professional and totally extraneous have unfortunately been allowed to operate in arriving at the decision to appoint Shri Varadachary. Shri Pranab Mukherjee has violated established administrative conventions and procedures and misused his position in the appointment of Shri Varadachary. (Para 7.49)

V. Deviation from established procedure and irregularities in the appointment of Shri T. R. Tuli as Chairman and Managing Director of Punjab National Bank

- (i) Before arriving at this decision to appoint the Chairman of a comparatively small bank in the Private Sector to the senior-most position in one of the biggest Public Sector banks in the country, no effort was made to consider the suitability for this post, of senior Managers within the public sector banking system itself as had been done in several other instances. (Para 7.57)
- (ii) This is yet another instance where the then Finance Minister Shri C. Subramaniam was virtually compelled to fall in line with the suggestion made by the then Prime Minister, Smt. Indira Gandhi and that such compulsion amounted to abuse of authority by the former Prime Minister. It clearly resulted in subversion of well established conventions. (Para 7.59)

VI. Deviation from the established procedure for the selection of officers for top level executive posts in public sector undertakings, in the case of Lt. Gen. J. T. Satarawala, as Chairman-cum-Managing Director, India Tourism Development Corporation.

It is not a healthy convention to post an officer as a top level executive, who was earlier interviewed and not considered suitable by the Public Enterprises Selection Board to the exclusion of the names in the panel recommended by the P.E.S.B. The better course would have been to request the P.E.S.B., to suggest a fresh panel of names. By ignoring the recommendations of a statutory body, the Government was making an inroad into the relevance and respectability of such a body.

(Para 7.63)

VII. Deviation from the established procedure for the selection of officers for top level executive posts in Public Sector Undertakings—in the case of Air Marshal H. C. Dewan, as Chairman, International Airport Authority of India.

If the person recommended by the P.E.S.B., in the present case was not acceptable for any particular reason, the appointing authorities could well have asked for a fresh panel of suitable candidates. By not doing this and appointing a person who had been interviewed by the P.E.S.B., and not found suitable, the Government has exposed itself to the charge of, to say the least, injecting into the selection process considerations which may well be extraneous to the requirements of the job. Such a practice does not add to the credibility of established institutions; rather it impairs it.

(Para 7.69)

VIII. Misuse of powers and institution of false criminal complaints against four senior officials by the CBI at the instance of Smt. Indira Gandhi.

(i) The evidence discloses a gross abuse of the authority vested in Smt. Indira Gandhi. She had taken into her head to act as she did merely because the officers of the Commerce and Industries Ministries had, in the discharge of their duties taken steps to acquire information which was likely to affect the interest of Maruti Limited. She pressurised Shri D. Sen to take proceedings for searching their houses and for filing complaints against them under the Prevention of Corruption Act, which were wholly unjustified and which were eventually dropped.

(Para 7.96)

(ii) The conduct of Shri Sen discloses that he has misused his authority in directing that First Information Reports be filed against all the four officers and in starting proceedings against them.

(Para 7.101)

(iii) Smt. Gandhi was responsible for institution of criminal proceedings against the four officers concerned, having their houses searched and subjecting them to humiliation; merely because they were responsible for collecting information in the discharge of their duties,

which would have been prejudicial to the interests of Maruti Limited, a concern in which Shri Sanjay Gandhi, her son, was vitally interested.

(Para 7.102)

(iv) It is imperative for the CBI to realise that in setting afoot a series of actions against individuals—whether officials or non-officials—they are irretrievably damaging the reputation and social standing of the individuals concerned. They should not, therefore, be allowed to initiate proceedings against anyone unless it is ensured that the facts on record warrant the type of proceedings that they launch on.

(Para 7.103)

(v) Now that we have seen that even the man at the top of the CBI with all his seniority and status can still lend himself and his organisation to serve purposes other than strictly legal, constitutional and moral, it has to be ensured that in future no such individual or organisation should be capable of being rendered a helpless and unquestioning tool in the hands of the powers that be. The Commission feels that certain safeguards need to be provided by making the Director CBI accountable to an independent body. Yet another suggestion can be that the Director CBI may be statutorily rendered independent of the executive Ministry and his term of office be made subject to a tenure.

(Para 7.104)

IX. Unlawful detention of Textile/Customs employees under MISA by Delhi Administration and institution of false CBI cases against four of them.

(i) Director CBI, Shri D. Sen, showed extra keenness to register cases against these four officers, though the material available on record did not warrant the action that followed. On the other hand, when it came to dealing with Shri Bhatnagar and Shri Suri, Shri Sen adopted a different yardstick. (Para 7.122)

(ii) The Commission cannot help feeling that Shri D. Sen applied invidiously different standards in dealing with the two sets of officers.

(Para 7.123)

(iii) Going entirely by the facts available on record, it has nowhere been established that these officers were corrupt or had done anything which could even distantly be interpreted as improper or incorrect. (Para 7.128)

(iv) Shri Bhinder on his own admission has been the prime mover in the sordid story of these arrests and detentions. (Para 7.130)

(v) The entire action by the CBI under Shri D. Sen was initiated on grounds, which were totally inadequate and imaginary. As against this, he let off without any action, two officials against whom there was adequate material to warrant prosecution under the Prevention of Corruption Act. He has grossly misused his position as the Director, CBI, and abused his authority.

(Para 7.133)

(vi) The Commission feels that Smt. Gandhi has abused her authority and misused her power in having caused the arrest and detention of these 12 officers without adequate justification and using the CBI to set in motion criminal cases against four of them, all of which had to be abandoned eventually for want of any material. (Para 7.134)

(vii) Shri Bhinder has been the hatchetman and he went about the arrest and detention of these officers without any justification whatever. He was also responsible along with Shri D. Sen to get the CBI to register cases against four of these officials. He has grossly abused his authority and misused his power. (Para 7.135)

X. *Misuse of powers and miscarriage of justice in saving Shri Sudarshan Kumar Verma, a clerk in the Railways, from legal punishment by the CBI Officials.*

(i) Normally, the Director CBI handles important cases dealing with high officers, whereas cases involving non-Gazetted officials are dealt with at the Branch level and neither the Director nor the Joint Director is concerned with such cases. But, in this case, shortly after the case against Shri Verma was registered the Director, CBI, Shri Sen called Shri A. P. Mukherjee, DIG, CBI, Delhi Branch and called for the case papers. (Para 7.140)

(ii) Shri A. P. Mukherjee of Delhi Branch sent his comments on the representation of Shri Verma. He was of the view that there was no substance in the representation. Shri A. P. Mukherjee had taken a courageous stand even at this stage when he should have been in no doubt about what this superior officer desired. (Para 7.142)

(iii) The circumstances of the case and the evidence given by Shri Sen leave little room for doubt that someone from the Prime Minister's household contacted Shri D. Sen and asked him to so arrange that Shri Verma was not prosecuted. Accordingly, contrary to the normal procedure, adopted in similar cases, Shri D. Sen himself called for the papers, attempted through his subordinates to retrieve reports from the Railways and having failed to do so, suggested different line of action according to which Shri Verma should be dealt with departmentally. (Para 7.145)

(iv) It is, therefore, a clear case in which perversion of the normal process by Shri D. Sen and misuse of power is established.

(Para 7.147)

XI. *Deviation from established procedure, misuse of power and abuse of authority by Shri T. R. Tuli, Chairman of the Punjab National Bank in allowing a clean over-draft to M/s. Associated Journals Ltd.*

(i) The bank advancing funds on a clean overdraft would normally try to ascertain the

credit-worthiness of the borrower and try to ensure whether the amount advanced would be repaid by the borrower on demand. This would be the minimum precaution which a banker could take before advancing even a small amount by way of clean overdraft. In the present case, however, no precautions which would be normal in advancing money on clean overdraft account were taken; but solely because of the intervention of the Minister Shri P. C. Sethi loan was advanced, disregarding the canons which would ordinarily govern the advancing of such a loan. (Para 7.156)

(ii) The Commission is firmly of the view that Shri Tuli who had permitted the overdraft and was responsible for the decision in this regard had taken it without making the minimum necessary examination of the facts of the case and without exercising a modicum of care or caution and that this conduct on his part is attributable to the fact that he was swayed by collateral considerations. Thus, this transaction was not a normal one in the ordinary course of the Bank's business. The Commission is of the view that Shri Tuli had subverted established procedure in permitting this overdraft without security to M/s. Associated Journals Limited. He has also misused his powers and abused his authority in so doing. (Para 7.157)

XII. *Deviation from established procedure in sanctioning facility by way of opening of three foreign letters of credit by the Punjab National Bank in favour of M/s. Krsma Chemicals Private Ltd.*

This is a clear instance where the Chairman and Managing Director of the Punjab National Bank, Mr. Tuli, took a decision and gave directions for its implementation contrary to the normal established procedures in such cases. (Para 7.167)

XIII. *Concessions by Punjab National Bank in favour of Maruti Ltd.*

Taking into account the evidence adduced and the arguments advanced, the Commission is of the view that no subversion of administrative procedures or misuse of power or abuse of authority has been established in this case. (Para 7.173)

XIV. *Deviation from the established procedure and irregularities in the reconstitution of the Boards of AIR India and Indian Airlines Corporations :*

(i) The normal or established procedure in regard to the appointment of the Board of Directors was not followed and Minister Shri Raj Bahadur was practically compelled to fall in line with the suggestions made by the then Prime Minister, Smt. Gandhi, and it was only after the suggestion made by her was carried out that the lists submitted were approved.

(Para 7.183)

- (ii) The role of oral instructions in the transaction of business of the Government needs to be defined and definite guidelines set down. To the Commission, this seems imperative not only in the interest of healthy administration, but also to protect the junior functionaries acting on the oral instructions of the seniors from the consequences of subsequent denials by the seniors when things go wrong. (Para 7.185)

XV. Decision Process Leading to the Purchase of Three Boeing 737 Aircraft by Indian Airlines

- (i) The manner in which this deal was pushed through suffers from several infirmities:—
- The Indian Airlines Management sent a letter to the Ministry for permission to issue a Letter of Intent to the Boeing Company without waiting for the report of Interline Committee constituted by the Indian Airlines Board.
 - The proposal was sent to Government even before it was approved by the Board of the Indian Airlines.
 - No steps were taken to complete the system study suggested by the Planning Commission's representatives.
 - The P.I.B. categorically opposed the proposal pending the completion of the system study. The Secretary's recommendations to abide by the PIB's recommendations were turned down by the Minister, Shri Raghuramaiah; apparently because he had been asked by Shri Dhawan to look into the matter urgently and Shri Raghuramaiah took the suggestion of Shri Dhawan as emanating from the Prime Minister.
 - According to the Finance Ministry, there was no instance of an Administrative Ministry going ahead with the proposal to the Cabinet for a decision against the recommendations of the PIB. This was done in this case.
 - The decision to sign the contract was given on February 8, 1977. On February 9, 1977 the contract was signed. Actually, the delivery schedule limit given by the Boeing Company had expired on February 7.
 - The visit of Shri Rajiv Gandhi to the office of the Chairman of the Indian Airlines, where he was shown the financial projections by the Director of Finance, apparently under the instructions of the Chairman, was a procedure, which was totally outside the ordinary course of business. (Para 7.202)
- (ii) There has been a certain amount of avoidable haste in rushing through the deal. (Para 7.203)

XVI. Detention of Smt. Gayatri Devi, Ex-Member of Parliament and Lt. Col. (Retired) Bhawani Singh under COFEPOSA Act, 1974

- While processing the material that was available with the Deputy Director Enforcement, against the two individuals, certain significant omissions were made in reproducing the information contained in the two letters of the Reserve Bank of India. (Para 7.210)
- In ordering the detention of these two persons under COFEPOSA Act, the processes and procedures prescribed by the Finance Ministry have not been followed. (Para 7.219)
- It is abundantly clear that in the cases of these two persons, the provisions of the COFEPOSA Act, were not at all applicable and these were resorted to, to give effect to a pre-determined decision to arrest these two persons. (Para 7.230)
- Shri Pranab Kumar Mukherjee, the then Minister of Revenue and Banking has misused his position and abused his authority in ordering the detention of Smt. Gayatri Devi and Col. Bhawani Singh on wholly insufficient grounds. It is a clear case of subversion of lawful processes and of administrative procedures. (Para 7.231)

XVII. Detention of Shri Bhim Sen Sachar and Seven others

- The practice of issuing warrants of arrest, first and obtaining the pre-dated grounds of detentions thereafter had become the general pattern so far as the detentions of persons under MISA in Delhi during emergency were concerned. (Para 7.240)
- The story of detention of Shri Bhim Sen Sachar and seven others provides a classic example of the misuse of the provisions of MISA This and similar cases which have come to the notice of the Commission reveal an undesirable trend in the administration of the MISA. When, as in this case, the Prime Minister felt satisfied about the detention of certain persons, instead of getting the orders issued by the Central Government, small functionaries like the Additional District Magistrates were directed to issue the warrants without they themselves being satisfied either about the need for detention of the individuals concerned or the adequacy of grounds for their detention. (Para 7.245)
- The decision to detain Shri Bhim Sen Sachar and seven others was taken by Smt. Gandhi. She has abused her position and misused her power in ordering the arrest of Shri Bhim Sen Sachar and seven others. (Para 7.250)

XVIII. *Improprieties Committed in regard to Shri Mangal Behari, IAS of Rajasthan Cadre, and Termination of the Services of Smt. Chandrawati Sharma, Assistant Teacher*

- (i) Shri Harideo Joshi has conceded that a mistake was committed in the case of Smt. Sharma. He thus misused his position, subverted the established administrative procedures and abused his authority in terminating the services of Smt. Sharma without observing constitutional provisions.

(Para 7.280)

- (ii) Smt. Indira Gandhi was responsible for (i) causing the termination of services of Smt. Chandrawati Sharma, Assistant Teacher, Government of Rajasthan, in violation of the Constitutional provisions; (ii) the prolonged forced leave on which Shri Mangal Behari had to remain for about 16 months; and (iii) for causing the attendant hardships which ensued as a result thereof. She has thus misused her position, abused her authority and subverted well-established administrative procedures and lawful processes.

(Para 7.287)

- (iii) The services of Smt. Chandrawati Sharma who was only an Assistant Teacher, were terminated without the slightest fuss or protest. . . . No functionary of the Government put up even as much as a note pointing out that the political activities alleged against her were not correct and that she was being kept out of service for no valid and understandable reason. As against this totally indifferent and callous attitude, the manner in which the State Government officials rallied to the support of Shri Mangal Behari, an IAS officer, is indeed unique and is in striking contrast to the manner in which Smt. Sharma was dealt with. How are we going to ensure that every employee of the Government regardless of their rank and status enjoys full security and protection of services? Until this is done, the manner in which these two functionaries of the Government were dealt with—one a low-placed Assistant Teacher, and the other a high-placed IAS officer—would be considered as an unpardonable and invidious distinction.

(Para 7.290)

- (iv) Considering the risks involved and the damage that an adverse IB report can cause to an individual, both in terms of his reputation as also of his career prospects, the Commission recommends that the Government should take steps to ensure that every IB report on the activities and material particulars of individual is correct.

(Para 7.293)

XIX. *Irregularities in Initiating Action Resulting in Search and Seizure Operations under the Income Tax Act in the case of two Trade Union Leaders*

While the circumstances leading up to the search and seizure operations in these two cases no

doubt appear to be somewhat unusual, especially Shri D. Sen's role therein, no subversion of administrative procedure or misuse or abuse of power has been clearly established.

(Para 7.303)

INTERIM REPORT II

CHAPTER VIII

Misuse of Media

I. *Translation of Congress Election Manifesto by All India Radio and Directorate of Advertising and Visual Publicity Translators*

Shri V. C. Shukla has violated the basic norms of administration and has indulged in abuse of authority in getting the translators attached to the All India Radio and D.A.V.P. for translating Congress Election Manifesto. Apart from that, it is also an offence under section 123(7) of the Representation of the Peoples Act of 1951.

(Para 8.34 and 8.35)

II. *Design of Election Posters for Shri V. C. Shukla by Artists of the Directorate of Advertising and Visual Publicity*

Shri V. C. Shukla has violated the basic norms of administration and had indulged in abuse of authority in getting posters for his election campaign designed by the D.A.V.P., artists. Apart from that, his conduct also comes within the mischief of section 123(7) of the Representation of the Peoples Act, 1951.

(Para 8.50)

III. *Harassment of Shri Kishore Kumar Play-back Singer, by the Ministry of Information and Broadcasting*

Apart from the constitutional responsibility, Shri V. C. Shukla is actually responsible for the various disabilities that were inflicted on Shri Kishore Kumar. This was a clear case of vindictiveness and gross misuse of governmental authority against a film artist of renown, only because the artist did not want to go along with the government sponsored programme due to certain personal reasons.

(Para 8.62 and 8.63)

CHAPTER IX

Cases of Misuse of Authority in The Income Tax Department

1. *Baroda Rayon Corporation—Search and Seizure under Section 132 of the Income Tax Act, 1961*

- (i) Shri S. R. Mehta's action in directing Shri Harihar Lal to initiate action under section 132 of the Income Tax Act in this case amounts to subversion of lawful processes and abuse of authority.

(Para 9.23)

- (ii) As the Head of the Income Tax Department, Shri S. R. Mehta cannot absolve himself

of blame for the very grave loss of seized material which should have been returned to the person from whom it was seized, by merely stating that he had left the papers on his Minister's desk. The responsibility for return of these papers to the concerned officers was clearly his and his alone. Shri Mehta's failure or omission in this regard amounts to subversion of lawful processes. (Para 9.24)

(iii) On the uncontroverted statement of Shri S. R. Mehta, that these papers were handed over to Shri P. K. Mukherjee, Shri P. K. Mukherjee's action in obtaining and retaining seized documents and subsequent failure or omission on his part to return them to the Chairman of the Central Board of Direct Taxes or to any other concerned or duly authorised officers in the Income Tax Department also amounts to subversion of lawful processes and abuse of authority. (Para 9.25)

(iv) Shri Harihar Lal was aware of the illegality of his action. However, in the circumstances then prevailing, Shri Harihar Lal's choice was limited and he chose to render himself a helpless and unquestioning tool of Shri S. R. Mehta. (Para 9.26)

(v) In spite of a wealth of judicial pronouncements and departmental instructions emphasising the need for administrative restraint and strict compliance with the law, the then Chairman of the Central Board of Direct Taxes, Shri S. R. Mehta, was himself instrumental in unleashing this dangerous weapon of search and seizure which could unjustly and irretrievably damage the business reputation and standing of the parties affected. (Para 9.27)

(vi) The extraordinary power of search and seizure under section 132 must be exercised strictly in accordance with law which provides the necessary safeguards and only for the purposes for which the law authorises it to be exercised. (Para 9.27)

II. Search and Seizure Operation by Income Tax Department in the Case of Bajaj Group of Companies

(i) This case illustrates boldly the prevailing misconception that if an authorising officer has, in consequence of information in his possession, reason to believe that action under section 132 should be initiated in the case of a Company or a group of Companies, he will be justified in authorising indiscriminate search and seizure at the business or residential premises of all persons connected with the Company, however, remote the connection may be with these Companies or even with their directors and employees. The conditions justifying the exercise of this extraordinary

power did not exist in the case of a large number of 120 places searched or surveyed (Para 9.41)

(ii) Issue of blank warrants of authorisation is not a mere procedural lapse. Such warrants can be misused so as to cause damage to the reputation of any innocent person. If proper implementation of action u/s 132 is not possible, as suggested, then the solution to the problem lies in seeking to amend the law, consistent with the requirements of adequate safeguards and not in flouting the statutory requirements with impunity. (Para 9.42)

(iii) Judicial decisions and departmental instructions brought to the notice of the Commission appear to have been observed only in their breach. Stern action by the Income Tax Department is necessary to prevent such wanton disregard of the law as well as the privacy of the citizens. (Para 9.40)

(iv) Where a blank warrant of authorisation is issued and the authorising officer has acted without any information on which he could have reason to believe that the statutory conditions for the exercise of the power of search existed, such action is clearly unlawful. (Para 9.42)

(v) The inquiry into search and seizure under section 132 of the Income Tax Act, 1961 in the Bajaj & Mukand Group of Companies has revealed several serious irregularities and the power was not exercised strictly in accordance with law. (Para 9.44)

(vi) The extraordinary power of search and seizure under section 132 must be exercised strictly in accordance with law which provides the necessary safeguards and only for the purposes for which the law authorises it to be exercised. (Para 9.27)

III. Special Instructions on matters relating to Maruti Limited

(i) Shri S. R. Mehta subverted administrative procedures and abused his authority in giving oral instructions to Shri Harihar Lal which had the effect of frustrating or, at any rate, inordinately delaying legitimate enquiries relating to benami share holdings in Maruti Limited, which *prima facie*, indicated evasion of taxes. (Para 9.59)

(ii) Oral orders or instructions involve the danger of being denied, twisted or misinterpreted by either party to suit his convenience. Hence these should be obtained in writing immediately and where it is not practicable to do so, written confirmation thereof should be obtained as soon thereafter as possible and in the meanwhile the recipient should record the oral directions or instructions. (Para 9.61)

CHAPTER X

Import of Aircraft by Dharendra Brahmachari of Aparna Ashram

- (i) Shri S. B. Jain and Shri A. M. Sinha failed to take even the elementary steps and ignored the specific information furnished to them with regard to Brahmachari's proposed trip to New York. (Para 10.30)
- (ii) Shri A. M. Sinha has, in not proceeding with the enquiries, failed to discharge his responsibilities. (Para 10.32)
- (iii) In this particular case, considering the person involved and the nature of the illegal transaction alleged against Brahmachari, it was a matter for the judgement and direction of a higher functionary than that of Deputy Director. It was a fit case for the exercise of Shri Jain's discretion and guidance. He has, however, tried to shift the onus to the Deputy Director. His conduct becomes yet more blame-worthy in the light of the subsequent note that he recorded in May 1977. (Paras 10.32 and 10.33)
- (iv) From the evidence it is quite clear that Brahmachari had obtained the Customs Clearance Permit by misrepresenting that the aircraft was a donation, when it was in fact purchased by him. He also made misrepresentation before the officers in the Office of the Chief Controller of Imports and Exports in the matter of increase in the value of the CCP, which he got increased from Rs. 4,00,000 to Rs. 6,14,000 when there was no evidence to indicate that the aircraft and spares of the value of Rs. 6,14,000 were gifted to him. (Para 10.56)
- (v) Brahmachari has fully exploited his association with the then Prime Minister's house in getting the aircraft imported by misrepresenting it as a gift. He has actively abetted the subversion of established procedures. (Para 10.58)
- (vi) Not only that the CCP was issued by subverting the well-established administrative procedures, but even the value of the CCP was progressively increased in three different stages by the concerned authority on the request of Brahmachari unsupported by documentary evidence to justify the enhancement. . . . There is no explanation from any of the witnesses either in the course of their deposition before the Commission or from the files that have come to the notice of the Commission for the unusual and extraordinary procedure which the Commission feels is a downright and unpardonable subversion of all the accepted norms and conventions of sound and healthy administration. (Paras 10.21 and 10.65)
- (vii) It appears that there had been undue haste at various levels in processing the application of Brahmachari for the grant of exemption

from Customs Duty. In the process, full enquiries regarding the status of the Ashram were not made. (Para 10.40)

- (viii) While granting exemption from Customs Duty at the time of the import of the aircraft, the Department of Customs and Central Excise had, *inter alia*, imposed two conditions :—

- (1) the aircraft will be used for transportation of the students as well as teachers from plains to Mantalai Ashram and back.
- (2) The Yoga training will be imparted free of charge.

From the evidence on record, it appears that both these conditions have been violated. (Para 10.53)

- (ix) Brahmachari continued to make misrepresentations for claiming exemption from Customs Duty on the import of the aircraft. His declaration that Aparna Ashram is a charitable institution was also untrue. (Para 10.57)

- (x) The evidence before the Commission leads to the conclusion that the initial decision to reject the proposal twice by the air Headquarters on valid grounds of security and sensitivity of the area was subsequently changed in favour of granting the permission, though with some conditions attached at the instance of the then Defence Minister, Bansi Lal. (Para 10.50)

- (xi) It is necessary to place on record that various officers of the Ministries showed extraordinary expedition in the processing of this case. For once, the proverbial red-tapism in the functioning of the bureaucrats was nowhere in evidence. While the expeditious functioning of the Government machinery is a desirable objective, expedition in this case was not at all motivated by considerations of efficiency, but on account of extraneous considerations. It is evident from the statements of witnesses before the Commission that almost all of them were aware of the standing of Brahmachari in relation to the Household of the then Prime Minister. Some of the witnesses frankly admitted that they apprehended harm to them should any one obstruct Brahmachari's proposals and projects. The apparently effortless manner in which Brahmachari was able to compel the officials of Ministry after Ministry stands out as a classic example of how an entire administrative system can be subverted by an errant individual if only he has the right contacts at the right places. (Para 10.59)

- (xii) For Brahmachari, the entire exercise of securing the CCP, the enhancement of the value of CCP, the Customs exemption, and the grant of landing facilities at Mantalai was

effortless. It gives the impression to the general run of the people that rules and laws are intended only for the law abiding citizens and for such of those who wield influence and authority, the rules do not matter and their projects are carried out. (Para 10.60)

(xiii) The Government may examine whether the administrative systems and procedures can be secured in future from the onslaughts of individuals like Brahamchari. (Para 10.61)

(xiv) To protect against misuse of authority at the decision-making levels, the corresponding responsibility to set out their reasons in writing in every case where a major or even a minor infraction of the procedures and rules are sought to be made, should be insisted upon. (Para 10.62)

(xv) The Government must provide for and protect the junior officers from the shifting of the responsibility by the seniors when things go wrong. This salutary principle should not be confined only to the officers but should reach the different levels of Ministers up to the highest. (Para 10.66)

(xvi) While withdrawing papers which have been released earlier as a part of administrative transaction, definite rules and guidelines should be laid down as to how the papers earlier released can be withdrawn or replaced, if at all. (Para 10.67)

(xvii) (a) In dealing with applications for exemption from customs duty, well-defined guidelines should be laid down to enable the decision-making levels to reach the right and uniform conclusions in every case and to safeguard against abuse.

(b) The onus to prove that the exemption sought for will be in public interest, should be on the applicants.

(c) Where exemption has been given subject to certain conditions, the applicant should be required to furnish evidence periodically that the condition imposed continue to be conformed to.

(d) The conditions on which gifts from foreigners may be received even by institutions should be clearly prescribed. (Para 10.69)

(xviii) Security considerations of the country should not be side-stepped to accommodate the demands of individuals like Brahamchari under any circumstances. (Para 10.70)

CHAPTER XI

ARRESTS AND DETENTIONS

I. Issue of Detention Orders under MISA

(i) An undesirable feature of detentions in Delhi during the emergency was the misuse of the power under the preventive sections of the

Criminal Procedure Code such as Sections 108 and 151, initially to secure the presence of the persons who were subsequently detained under MISA. (Para 11.20)

(ii) Another ugly feature of arrests and detentions in Delhi during emergency concerns the re-arrest of persons released on bail or otherwise by the Courts. (Para 11.26)

(iii) It also came to the notice of the Commission that some MISA warrants were deliberately kept unexecuted. In fact, directions were issued by Shri K. S. Bajwa and Shri P. S. Bhinder to District Superintendents of Police not to execute certain warrants. (Para 11.31)

(iv) Section 14 of MISA read with Section 21 of the General Clauses Act empowers the detaining authorities to revoke an order issued under MISA by the detaining authority. This power was taken away from the District Magistrate/Additional District Magistrates in Delhi through specific instructions issued from the office of the Lt. Governor under the signature of Shri Navin Chawla on July 4, 1975. The effect of these instructions was to ensure that whereas detentions could be ordered liberally, revocation of orders was not to be considered by the detaining authorities at all. (Para 11.34)

(v) Though the Law Department was associated with the processing of detention orders at the time of confirmation and review, no legal scrutiny was, in fact, done The initial attempts of the Law Department to scrutinise the grounds of detention and give legal advice were discouraged and they were made to realise the "futility of finding faults with detention orders". (Para 11.37).

(vi) The evidence of Shri J. K. Kohli, Chief Secretary, Smt. S. Chandra, Special Secretary (Home), Shri T. R. Kalia, Deputy Secretary (Home) and Shri Jagmohan, Deputy Secretary to the Lt. Governor, proves beyond doubt the practice of ante-dating the confirmation orders of the Lt. Governor whenever the papers were not received from the detaining authorities in time. (Para 11.39)

(vii) Though Shri Navin Chawla had no position in the jail hierarchy, he was exercising extra statutory control in jail matters and sending instructions on all matters including the treatment of particular detenus. Shri Chawla had suggested the construction of some Cells with asbestos roofs to 'bake' certain persons. (Para 11.47).

(viii) Transfer of MISA detenus presents an excess of its own kind. 200 MISA detenus including some prominent Opposition leaders were transferred from Tihar Jail to jails outside Delhi during the emergency. Shri S. K. Batra has stated that the transfer of such

persons involved great discomfort to the detenus because of the additional inconvenience and expense it involved to their relatives. He said that such transfers are always considered as penal measures in Jail Administration. (Para 11.49)

II. Treatment in Jails

Political detention is to be basically preventive in character and not punitive. This aspect seems to have been conveniently ignored during the emergency. (Para 11.52)

III. Applications for Parole

- (i) No uniform policy was followed by Delhi Administration in matters relating to grant of parole. (Para 11.55)
- (ii) While some deserving cases for parole were dealt with by the Administration in a very callous manner, there were other cases in which the Administration was unmistakably indulgent to the detenus. What governed these different considerations in the attitude of the Administration can only be inferred. (Para 11.56)
- (iii) Grant of parole was used by the Delhi Administration as an incentive to promote family planning in the Tihar Jail. (Para 11.57)
- (iv) Attitude of Delhi Administration was particularly harsh in dealing with the requests from the student detenus for release on parole to enable them to take their university examinations. (Para 11.58)
- (v) Though Section 16 of the Delhi Detenus (Conditions of Detention) Orders, 1976 governing the conditions of MISA detenus in Delhi provided that "student detenus may be allowed to appear in examination only with the permission of the Administrator", the discretion was always used against the applicants.

IV. Attitude of Delhi Administration towards Ministry of Home Affairs

- (i) In cases where the Lt. Governor did not like to agree with the advice from the Home Ministry, the officials of the Home Department found that invariably the Lt. Governor's views prevailed and the Ministry of Home Affairs had to retrace its stand. (Para 11.61)
- (ii) During the emergency, Shri Bajwa used to furnish material to the authorities concerned and used to issue orders to them asking them "to pick up" the persons named in the list. (Para 11.74)
- (iii) S/Shri P. S. Bhinder, K. S. Bajwa and Navin Chawla exercised enormous powers during the emergency because they had easy access to the then Prime Minister's house. Their approach to the problems of the period relating to the citizens was authoritarian and

callous. They grossly misused their position and abused their powers in cynical disregard of the welfare of the citizens, and in the process rendered themselves unfit to hold any public office which demands an attitude of fairplay and consideration for others. In their relish for power, they completely subverted the normal channels of command and administrative procedures. (Para 11.76)

- (iv) Shri Krishan Chand by his various actions and inactions with regard to important and vital matters appears to have abdicated his legitimate functions in favour of an over-ambitious group of officers like S/Shri Bhinder, Bajwa and Navin Chawla with disastrous consequences to the people. He betrayed his trust and committed a serious breach of faith with the citizens of Delhi and failed to administer the affairs of the territory honestly and justly. (Para 11.77)
- (v) Shri Sushil Kumar, in an effort to beat the clock, had also recourse to the issue of a few blank warrants in addition to the warrants that were prepared and issued by him to the police. Since these detention orders were issued without any satisfaction of the detaining authority, the orders were illegal. Since, however, the orders were issued pursuant to the directions of Smt. Indira Gandhi, responsibility for the illegal detentions must primarily rest on her. (Para 11.78)
- (vi)The Commission has to come to the conclusion that in the light of the evidence on record and without the benefit of knowing Smt. Indira Gandhi's version, Smt. Indira Gandhi was responsible for directing the arrest and detention of a number of respected citizens without authority of law motivated solely by a desire to continue to remain in power. (Para 11.79)

V. Detention of Shri Mam Chand son of Shri Malkhan

- (i) Both Shri Krishan Chand and Shri Bhinder had misused their position and authority in ordering the detention and continuing in detention a helpless and defenceless individual like Shri Mam Chand. (Para 11.88)
- (ii) It was an undesirable act on the part of the Administration to have allowed a poor and innocent man like Mam Chand, the only bread-winner of the family, to remain under detention for 19 long months. (Para 11.89)

VI. Detention of Dr. Karunesh Shukla

- (i) Arrest of Shri Karunesh Shukla was a misuse of power by the Lt. Governor of Delhi, Shri Krishan Chand on the advice of Shri Bajwa... Shri K. S. Bajwa as Superintendent of Police CID apparently wielded enormous powers during the days of the emergency and often misused them. (Para 11.100)

- (ii) Shri Krishan Chand and Shri K. S. Bajwa, both misused their powers and misused their authority in the detention of Dr. Karunesh Shukla on grounds which were not covered by the provisions of the MISA. (Para 11.102)

VII. Detention of Shri Virender Kapoor

- (i) The initial arrest of Shri Kapoor was in the presence of Shri Bhinder. He as a Deputy Inspector General should have satisfied himself about the necessity of arresting Shri Kapoor. To that extent he had misused his position and abused his authority. (Para 11.118)
- (ii) Shri Bajwa has also misused his authority in Shri Kapoor's arrest. (Para 11.119)
- (iii) The detention of Shri Kapoor under MISA under the orders of Shri Krishan Chand was in keeping with the general policy of negligence and lack of interest that he had displayed in the general run of detentions numbering over 1,000. He has abused his authority and misused his position in this as in several other cases. (Para 11.120)
- (iv) The Commission cannot condemn adequately this type of the use of MISA on fabricated grounds. An Administration which is totally impervious to the awareness of the basic norms of liberty and the provisions of law, and a set of functionaries who are willing to do anything at the bidding of their seniors without application of mind and without realising the consequences of their acts, have in them the makings of a totalitarian society. The Commission is of the opinion that the Government must make appropriate provision for fixing responsibility on the persons issuing written or even oral orders for every detention. (Para 11.121)

VIII. Detention of Vaid Guru Dutt

Shri Krishan Chand misused his position in ordering the detention of Vaid Guru Dutt.....In his anxiety to please the ex-Prime Minister he seems to have overreacted to a situation which at best should have been ignored. It is the arrest of an old infirm and respected individual like Guru Dutt which shakes the faith of the people in the fairness and competence of the Administration. (Para 11.133)

IX. Detention of Shri Prabir Purkayastha

The manner in which Shri Bhinder went about the job of arresting Shri Purkayastha believing him to be Shri D. P. Tripathi discloses his callous attitude. This was a gross abuse of authority. The story of arrest of Shri Purkayastha by Shri Bhinder, the manner in which the Magistrate issued the detention orders and the part played by the Lt. Governor illustrate the complete break-down of the rule of law. (Para 11.149)

X. Use of MISA against Ordinary Criminals

A large number of ordinary criminals who could be dealt with effectively under the provision of normal laws were detained under MISA in Delhi during the emergency. This was in defiance of the specific directions of the Ministry of Home Affairs. (Para 11.150)

XI. Detention of Juvenile Delinquents

In these category of cases MISA powers were invoked without adequate grounds and in defiance of the categorical instructions of the Ministry of Home Affairs. Use of the harsh powers under MISA for dealing with such offenders for comparatively unimportant cases which involved no consideration of the security of the State or larger considerations of public order amounts to misuse of the powers and undoubtedly results in denial of the beneficent provisions of law relating to juvenile delinquents. (Para 11.162)

XII. Use of MISA against violators of Delhi Administration's (Display of Prices of Articles) Order 1975

Shri Krishan Chand has misused his position and abused his power by invoking emergency powers including MISA in cases which could well have been dealt with effectively under the normal provisions of law. (Para 11.171)

CHAPTER XII

SPECIFIC CASES OF MISUSE OF AUTHORITY

I. Requisitioning of Vishva Yuvak Kendra, Chanakya-puri, New Delhi under the DISIR Act

(i) The building of the Vishva Yuvak Kendra was requisitioned by the Delhi Administration at the instance of Smt. Indira Gandhi, in order to pressurize the management of the Indian Youth Centre Trust to agree to re-constitute the Board of Trustees; that Shri Krishan Chand was acting as spokesman of Smt. Indira Gandhi in this regard, and that Shri V. C. Shukla was also making determined efforts to acquire a hold over the Vishva Yuvak Kendra with a view to run it in consultation with Shri Sanjay Gandhi. (Para 12.13)

(ii) Smt. Indira Gandhi unduly pressurized Shri Krishan Chand, the then Lt. Governor, Delhi, to requisition the Vishva Yuvak Kendra building. (Para 12.22)

(iii) Shri Krishan Chand misused his power and authority and so also did Shri V. C. Shukla in this case. (Para 12.23)

II. Appointment of Shri U. S. Srivastav as the Chairman of Delhi Transport Corporation in 1976

This case illustrates how established rules and procedures expected to be followed by the appointing authorities were in fact not observed even though the correct procedures and the problems that were likely to arise from this appointment, were pointed out at different levels. (Para 12.31)

III. Harassment of the firm Messrs. Pandit Brothers; their arrest and related matters

(i) Series of harassments against the firm of Messrs. Pandit Brothers including the arrests of the Manager and the two partners was initiated at the instance of Shri Sanjay Gandhi. (Para 12.60)

(ii) Shri Krishan Chand was the prime mover in getting the raid organised. (Para 12.60)

(iii) It appears that the Administration employed the police for a purpose which did not fall within their legitimate sphere of duties and for which they were not equipped. Such misuse of the police force by the Administration should be a matter for concern. (Para 12.62)

(iv) The association of Commissioner of Income Tax with this case following his visit to Shri R. K. Dhawan in the Prime Minister's house is also disconcerting. Since no summons under Section 8B of the Commissions of Inquiry Act or notice under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules were issued to Shri Luther, the Commission refrains from making any observations on Shri Luther. Yet the Commission is constrained to suggest to the Government that it must lay down certain rules regarding the chain of command through which alone orders from above should be communicated to the officers in the field. If the process of short-circuiting the chain of command is not frowned upon, the system would be exposed to the machinations of unscrupulous operators willing to jump levels in their anxiety to get close to the seat of power. (Para 12.64)

(v) According to Shri Krishan Chand, the decision to launch the Sales Tax and Price Tag raids against Messrs. Pandit Brothers was a sequel to the orders that emanated from Shri Sanjay Gandhi. Even so he had a direct responsibility which he failed to discharge. He allowed himself to be used as a willing tool to subserve the designs of Shri Sanjay Gandhi. (Para 12.65)

(vi) Shri Sanjay Gandhi who wielded such enormous power during the emergency did not confine his activities only to the operation of demolition of houses, shops and industrial buildings. He took a hand even in getting some persons whom either he did not like or who had thwarted him, arrested and detained. In the present case, the evidence brought on record clearly points to him as the source and the motivator of all the harassments that followed the action against Pandit Brothers. On the direct responsibility of Shri Sanjay Gandhi for the harassment that was meted out to Pandit Brothers, the Commission feels no doubt. (Para 12.71)

CHAPTER XIII

DEMOLITIONS IN DELHI

I. Demolitions in General

(i) After the declaration of the Emergency, demolition operations carried out by the DDA, MCD and NDMC received a spurt. The general policy of caution and concern for the people affected by demolitions gave place to a measure of reckless speed in

clearing and cleaning up the areas earmarked without a corresponding concern for the people whose houses were demolished. Alternative arrangements to re-settle them were not simultaneously made with the same speed. (Para 13.1)

(ii) An impression had been created that Shri Sanjay Gandhi was actively associated with the demolition programmes in Delhi. . . . The affected people went in deputations to Shri Sanjay Gandhi to seek his assistance in several cases. Shri Sanjay Gandhi used to meet these deputationists and deal with them in his own peculiar way. (Para 13.52)

(iii) In their hurry to implement the demolition programme, neither the DDA nor the MCD took the precaution in a number of cases of following even the basic minimum procedures laid down in the Delhi Development Act, Delhi Municipal Corporation Act and other relevant laws. Some of the features of the demolitions are:—

(i) No notices as required were issued before the buildings were demolished.

(ii) In a number of cases of acquisition of private property, land was occupied before even the proceedings for acquisition were commenced or before the date on which possession could be taken under the law.

(iii) In a number of cases, land use prescribed under the Delhi Master Plan was changed without the concurrence or permission of the Union Government.

(iv) To ensure that the affected people do not approach the law courts for redress, or political leaders, demolitions were carried out without advance intimation. Stay orders, where these could be obtained, were not respected and demolitions were carried out. Persons who approached the law courts were arrested under Section 108 Cr.P.C. on fabricated evidence or threatened with arrest under MISA and compelled to withdraw the proceedings initiated by them.

(v) A squad of the Police was permanently attached to the DDA, ostensibly for protection of the DDA officials who used to go on demolition programmes to different areas. Even when the actions were illegal and arbitrary, the Police unit attached to the DDA remained present. The squad used to be supplemented by large contingents of both armed and unarmed police from nearby Police Stations and the Lines with the object of intimidating and terrorising the aggrieved citizens and to prevent them from offering resistance to the demolitions. This affected the image of the Police also in the eyes of the public.

(vi) When there was public criticism against unauthorised demolitions or some affected people had taken the matter to the Court, attempts seem to have been made to fabricate the records or to pre-date orders in an effort to establish that notices were actually issued

and served mostly by affixation even when such notices had not been issued.

- (vii) The demolition operations were carried out like a blitzkrieg in utter disregard of the human problems involved. Alternative accommodation sometimes was provided, but more often only open plots of land were allotted which were so small that no residential houses could be built on these. Very few built-up quarters were allotted to the affected persons.
- (viii) A large number of persons whose residences were demolished, were making a living by performing some services for the residents living in the nearby areas. They belonged mostly to the class of masons, milkmen, domestic servants, watchmen, etc. When alternative sites were given to the persons whose houses were demolished at places far away from their place of work, they had to incur extra expenditure in addition to undergoing additional inconveniences for reaching their site of work.
- (ix) In the matter of allotment of alternative accommodation, a 25 square yards of plot was given irrespective of the area earlier occupied by the concerned people and which might have been demolished. Normal price was charged for this plot of land. In many cases no compensations were offered or paid.
- (x) In some of the areas of rehabilitation even the basic amenities were wanting, and the houses had been constructed back to back in such a manner that there was no ventilation or even passage between two houses. The rehabilitation areas in some cases presented a picture of hasty planning and indifferent execution. (Paragraph 13.53)
- (xi) The demolitions undertaken in Delhi during the Emergency did not conform to the established legal and administrative requirements. The Commission recommends that the Government may take special steps to redress the grievances of the affected citizens on priority basis after considering the cases on merits. (Para 13.54)

II. Demolitions in Bhagat Singh Market

(i) Shri Ailawadi's contention that the demolitions were purely voluntary cannot be accepted.... It, therefore, appears from the documentary and oral evidence that the New Delhi Municipal Committee had carried out demolitions in Bhagat Singh Market and that this was done under the supervision of its Member-Secretary, Shri Ailawadi. (Para 13.79)

(ii) After the verandahs had been declared as a public street under Section 171(4) of the Punjab Municipal Act, the Committee could not proceed to remove encroachments or to demolish any structures unless the proper procedure laid down in Section 172(1) of the Punjab Municipal Act was followed. (Para 13.80)

(iii) Shri Ailawadi had exceeded his powers and misused his authority in demolishing the shops in the Bhagat Singh Market without observing the provisions of the law on the subject. (Para 13.82)

III. Demolitions in Sultanpur Mazra—Occupation of Land in Vill. Sultanpur Mazra and Phoot Kalan

(i) The land was occupied by the D.D.A. in spite of protests of the villagers. The so-called consent of the villagers appears to have been taken after the D.D.A. had already occupied the land and when the villagers had no option but to try and secure the best possible terms from the D.D.A. (Para 13.96)

(ii) At the time land was occupied, even the proposal for the issue of notification under the Land Acquisition Act had not been signed. (Para 13.96)

(iii) From the statements of witnesses, which have not been challenged by Shri Jagmohan or Shri Ranbir Singh, it is apparent that force was used in removing the residents and demolishing their houses. A contingent of police was present and bull-dozers were used. (Para 13.106)

(iv) After the structures were demolished, the D.D.A. had no legal right to occupy the land on which these buildings were constructed and the action of S/Shri Jagmohan and Ranbir Singh, Executive Officer of the D.D.A. was illegal as the land was occupied much before the issue of notification on March 2, 1977. (Para 13.107)

IV. Demolition in Sarai Pepal Thala and Jehangirpur Bhulswa

(i) The plea that entire operation carried out was on a voluntary basis cannot be accepted. (Paras 13.121 & 13.126)

(ii) Shri Jagmohan misused his position and abused his authority in ordering the illegal occupation of the land in village Jehangirpur Bhulswa and village Sarai Pepal Thala without proper proceedings under the Land Acquisition Act or also in ordering the demolition of structures in these villages without going through procedure laid down in the Delhi Development Act. (Para 13.128)

V. Demolition of Arya Samaj Temple

(i) Shri Jagmohan has abused his position and misused his powers in ordering the demolition of a building used as a place of worship. (Para 13.144)

(ii) Shri S. M. Dua, the Executive Officer of D.D.A. seems to have played a part in fabricating the record and his denial in this regard is not acceptable. (Para 13.144)

VI. Demolition in Turkman Gate Area

(i) Shri Jagmohan informed his subordinate officers about the proposed demolition operations in Turkman Gate only on April 7, 1976 and did not give sufficient time to them to go through the records and survey the area by making enquiries from the residents about the status of their property. (Para 13.172)

(ii) Shri H. K. Lal and Shri Jagmohan have shown scant respect for the rights of others and have misused their authority on a massive scale. The demolitions insofar as they concerned the unacquired and private properties were done without observing the due processes of law. (Para 13.173)

(iii) Shri Bhinder's action in requisitioning bulldozers to the Turkman Gate area even before the riots were brought under control is an indication of the extreme and indecent hurry in carrying out the demolition programme. Shri Bhinder thus showed great callousness to the miseries of the people of the area. He has abused his authority and misused his powers. (Para 13.174)

VII. Demolition in Village Samalakha

The Municipal Corporation of Delhi not only demolished the structures but also took possession of the private land in village Samalakha without any legal authority. Shri O. P. Gupta, the then Zonal Assistant Commissioner(R) who tried to follow the legal procedure was harassed and forced to go on leave. Subsequently he was accommodated in a junior post. The demolition and its illegalities have been admittedly done under the orders of Shri B. R. Tamta. He had misused his power and abused his authority. (Para 13.184)

VIII. Demolitions in Village Kapas Hera

(i) Demolitions carried out in this village allegedly at the instance of Shri Sanjay Gandhi were unauthorised and procedures prescribed by law were not followed either by the D.D.A. or by the M.C.D. (Para 13.186)

(ii) This area was not a development area under the D.D.A. and the D.D.A. had no legal authority to demolish any structures here. However, witnesses stated that it was the D.D.A. which had demolished the structures. (Para 13.208)

(iii) The action of demolishing the house of Lt. Col. Ram Singh Yadav, a retired Army officer in this village was, as per Shri B. R. Tamta, taken on the orders of Shri Sanjay Gandhi. He had also to take disciplinary action against his own officers as he was pressurised by Shri Sanjay Gandhi. (Para 13.214)

(iv) S/Shri Jagmohan, B. R. Tamta, Ranbir Singh and Satya Prakash were all responsible for the demolitions in varying degrees. They had all abused their authority and misused their powers in going about the demolitions in the manner in which they did without observing the requirements of law and procedures. (Para 13.224)

(v) Shri Sanjay Gandhi was responsible for initiating the entire demolition operations in this village and insofar as demolitions were illegal, he has to take his share of the responsibility for the same. (Para 13.230)

IX. Demolitions in Arjun Nagar

Some of the demolitions done by the D.D.A. in Arjun Nagar area were illegal. S/Shri Jagmohan,

Satya Prakash and Ranbir Singh have all participated each in his respective field and contributed to the illegal demolitions. (Para 13.270)

X. Demolitions in Karol Bagh

The demolitions in Karol Bagh were done at the instance of Shri Sanjay Gandhi. Among other considerations the political affiliation of the shopkeepers to the party opposed so the Congress was one of the deciding factors which impelled Shri Sanjay Gandhi to order the demolition of the structures in Karol Bagh. The responsibility for these demolitions must rest entirely with Shri Sanjay Gandhi and Shri B. R. Tamta. (Para 13.287)

XI. Demolitions in Andheria Mor

(i) Action for demolition in Andheria Mor could have been taken by the Corporation only under Section 343(1) of the Delhi Municipal Corporation Act. Admittedly the procedure laid down in this Section has not been carried out. There is no other law under which the Corporation could have demolished the structures in Andheria Mor. The fact of demolition and its illegality has been admitted by Shri Tamta and the only plea he has taken is that this was done on the instructions of Shri Sanjay Gandhi. This by itself cannot absolve him of his responsibility. He had abused his authority and misused his powers.

(ii) The demolition operations which took place in Andheria Mor were carried out at the instance and under the directions of Shri Sanjay Gandhi and he was responsible for ordering the properties of the villagers to be demolished and the order was without any authority of law. (Para 13.304)

XII. Conclusions

(i) In a number of cases, the normal and established legal processes were not complied with by Shri Jagmohan and Shri Tamta. (Para 13.306)

(ii) It has also very vividly been brought on record that the Delhi Development Authority indulged in falsification and fabrication of records. (Para 13.306)

(iii) Very often the demolitions were undertaken for considerations which were political and not infrequently whimsical. (Para 13.306)

(iv) Though the Lt. Governor was the head of the Administration and was also the Chairman of the Delhi Development Authority, he appears to have been completely ignored by these functionaries, who for all their actions took orders directly from Shri Sanjay Gandhi. The demolitions of places of worship specifically required the prior orders of the Lt. Governor. The requirements was completely ignored when the DDA demolished the Arya Samaj Temple. The lament of the Lt. Governor, Shri Krishan Chand, that nobody consulted him or listened to him and that they used to take orders directly from Shri Sanjay Gandhi has been heard by the Commission with a feeling of disgust, for he admitted that he turned a deaf ear, and a blind eye to every conceivable piece of illegality and impropriety. (Para 13.207)

(v) Shri B. R. Tamta as Commissioner of MCD had the honesty to admit that he had done wrong things because of compulsions particularly the pressure on him of Shri Sanjay Gandhi. This by itself cannot be considered an extenuation of his conduct and he has also abused his authority and misused his power. (Para 13.308)

(vi) Shri Jagmohan grossly misused his position and abused his authority. He, during the emergency, became a law unto himself and went about doing the biddings of Shri Sanjay Gandhi without care or concern for the miseries of the people affected thereby. (Para 13.309)

(vii) Shri Sanjay Gandhi has actually aided and abetted the illegal demolitions undertaken by the DDA and the Municipal Corporation of Delhi and the evidence on record goes to show that he was the prime mover in majority of the illegal operations that took place in Delhi. (Para 13.310)

(viii) In the view of the Commission the manner in which Shri Sanjay Gandhi functioned in the public affairs of Delhi in particular is the single greatest act of excess committed during the period of emergency for which there is no parallel nor any justification for such assumption of authority or power in the history of independent India. While the other acts of the excesses may have been in the nature of acts committed by functionaries having some shadow of authority acting in excess of their powers, here was a case of an individual wielding unlimited powers in a dictatorial manner without even the slightest right to it. If this country is to be rendered safe for future generations, the people owe it to themselves to ensure that an irresponsible and unconstitutional centre of power like the one which revolved round Shri Sanjay Gandhi during the emergency is not allowed to come up ever again in any form or shape or under any guise. (Para 13.311)

CHAPTER XIV

TURKMAN GATE FIRING

Turkman Gate Firing Commencement of Demolitions

- (i) It is not possible to accept the plea that an operation of the type undertaken in the Turkman Gate locality could have gone on without the Intelligence Wing of the Delhi Police knowing anything about it.
- (ii) The uncertainty about the area to be cleared by demolitions and the extension of this area, day after day contributed in no small measure to the tension being built up and which eventually culminated in the tragedy.
- (iii) There is confusion about the exact provocation which resulted in the riot. The police placed the responsibility on the public and the public on the police.

- (iv) The relevant registers in the police lines did not correctly reflect the actual issue of the arms and ammunition on April 19, 1976. This shows gross carelessness at the concerned levels. These omissions could also be deliberate so that the records would be silent if it is scrutinised in an inquiry.
- (v) There is a lot of confusion about the number of rounds that were actually fired in the course of the riots.
- (vi) The police line record did not even state the exact number of men detailed for duty in connection with the riot on the relevant day in Turkman Gate area.
- (vii) A gross and probably a deliberate effort has been made to cover up the whole incident by not getting even an administrative enquiry made into the events leading to the death by police firing of admittedly six persons.
- (viii) A report regarding the firing, as required in the Punjab Police Rules, was not drawn up. The report prepared by the Additional District Magistrate and the Superintendent of Police lacked the most important details such as the exact number of persons who died, the rounds fired etc.
- (ix) The magistracy did not fulfil the role expected of it.
- (x) The bodies of the persons who had died were taken to the police station and not to the mortuary which was closer to the scene of the incident than the police station.
- (xi) Enquiries into complaints and molestation of women and looting of property, ordered in a couple of cases were not pursued.
- (xii) A police wireless log book had been tampered with. (Para 14.159)
- (xiii) All the important documents such as General Diaries of the Police Stations, the documents of the Reserve Police Lines dealing with the quantum of force on the fateful day, the details regarding the arms and ammunition issued to various police parties and even the one and only report that was sent by the Administration on the events of the day on April 20, 1976 contain no relevant details. Absence of the relevant details and of these vital documents cannot be regarded as mere accidental coincidence. (Para 14.160)
- (xiv) Investigation of the FIR No. 189 dealing with the riots was entrusted to a very junior officer of the rank of an ASI when almost all the important senior officers of the Delhi Administration were present and were witnesses to the events of the day. Both the Inspector General of Police and

the District Magistrate have stated that they were not aware that the investigation of this important case was being done by such a junior officer. It is not surprising that the prosecution staff who scrutinised the investigation of this case sometime in May 1977 have found the investigation full of defects, many of which were of a grave nature.

(Para 14.161)

- (xv) The prosecuting officer found a number of defects in the investigation which, in a large measure, was avoidable with a little supervision and guidance of the investigation by the authorities at appropriate levels. This neglect of such an important investigation is a part of design to cover up the events of the day.

(Para 14.162)

- (xvi) The official communique on the events of the day, prepared at Raj Niwas, issued in the name of Mir Mushtaq Ahmed, sought to give a communal colour to cover up a gross failure on the part of the Administration.

(Para 14.163)

- (xvii) Though the Family Planning Programme may have contributed to the build-up of tension among all the residents of the area, the firing was a direct and immediate sequel to the decisions of the authorities to proceed with the demolitions regardless of the resistance of the people and the consequences. The subsequent conduct of the authorities, significant silence of several important and relevant records on material particulars, indicates that this was a part of a design to justify the firing by the Police.

(Para 14.164)

- (xviii) An attitude of vindictiveness by the Administration towards the citizens noticed is indefensible.

(Para 14.165)

- (xix) A pre-dated firing order was not signed through Shri N. C. Ray, after pressure was brought to bear upon him by Shri Sanjay Gandhi at the instance of Shri Bhinder.

(Para 14.171)

- (xx) Shri Bhinder pressurised the magistrates for doing wholly improper acts and he got the firing order signed and ante-dated through the intervention of Shri Sanjay Gandhi.

(Para 14.172)

- (xxi) Shri Sanjay Gandhi intervened on behalf of Shri Bhinder and pressurised the District Magistrate and his colleagues and a junior magistrate to sign and pre-date the firing order.

(Para 14.178)

- (xxii) It was highly improper and unwarranted interference on the part of Shri Sanjay Gandhi to have called the Magistrates to his residence and ordered them to do a wholly improper and illegal act.

(Para 14.178)

CHAPTER XV

Observations of the Commission

- (i) With the Press gagged and a resultant black out of authentic information, arbitrary arrests and detentions went on apace. Effective dissent was smothered, followed by a general erosion of democratic values. High-handed and arbitrary actions were carried out with impunity. The nation was initially in a state of shock, and then of stupor, unable to realise the directions and the full implications of the actions of the Government and its functionaries.

That the primary and not infrequently the sole motivation in the case of a number of public servants who acted unlawfully to the prejudice of the rights of citizens, was the desire for self-protection-desire for survival, may be regarded as some extenuation of their conduct. Yet, if the nation is to preserve the fundamental values of a democratic society, every person whether a public functionary or private citizen must display a degree of vigilance and willingness to sacrifice.

(Para 15.1)

- (ii) The circumstances in which the emergency was declared and the case with which it was accomplished should be a warning to the citizens of the country. (Para 15.3)
- (iii) Smt. Indira Gandhi did not consult the Cabinet even though she had plenty of time to do so. There is enough evidence to show that Smt. Indira Gandhi planned the imposition of the emergency atleast as early as June 22. She had also shared the thought with some of her political confidants as early as morning of June 25.

(Para 15.4)

- (iv) In the absence of any explanation which would warrant the declaration of an emergency, the inference is inevitable that a political decision was taken by an interested Prime Minister in a desperate endeavour to save herself from the legitimate compulsion of a judicial verdict against her.

(Para 15.5)

- (v) The nation owes it to the present and the succeeding generations to ensure that the administrative set up is not subverted in future in the manner it was done to serve the personal ends of any one individual or a group of individuals in or near the Government.

(Para 15.6)

- (vi) Censorship of news and the manner in which the media was manipulated should be a lesson to the Government and to the people that in a vast country like ours Blanketing of news in the way it was done, has serious repercussions on the lives and the thoughts of the people.

(Para 15.7)

- (vii) The State owes it to nation to assure that judiciary will not be subjected to strains which might even indirectly operate as punitive merely because of pronouncements not to the liking of the executive authority.

(Para 15.10)

- (viii) In selecting its functionaries the Government should not throw to the winds the rules that have been framed for making such appointments. The Government having framed the rules governing its conduct cannot normally arrogate to itself the discretion to disregard them, unless there are demonstrably compelling reasons and circumstances justifying the sidestepping of those rules.

(Para 15.11)

- (ix) Forging records, fabrication of grounds for detentions, ante-dating of detention orders, the callousness with which the request of the detenus for revocation of orders for detention or even parole were ignored should be a warning to every thinking man as to how an Act initially intended to serve an extremely limited purpose to deal with the misdeeds of a special category of persons can be given such a wide and comprehensive application so as to embrace all sections of the population to penalise dissent.

(Para 15.12)

- (x) The collusion between the police and the magistracy in denying the citizens their basic freedoms by arrests and detentions of non-existent grounds is a matter of anguish.

(Para 15.13)

- (xi) The Government must seriously consider the feasibility and the desirability of insulating the police from the politics of the country and employing it scrupulously on duties for which alone it is by law intended. The policemen must also be made to realise that politicking by them is outside the sphere of their domain and the Government would take a very serious view of it.

(Para 15.16)

- (xii) The politicians who use a public servant for purely political purpose and the public servant who allows himself to be so used are both basically doing a signal disservice to the country.

(Para 15.18)

- (xiii) The vast majority of demolitions were carried out by a complete disregard for the

human sufferings of persons in very humble walks of life and the Government could take immediate steps to remedy the wrong and also to ensure that the conditions in the resettlement colonies are rendered safe, clean and convenient.

(Para 15.21)

- (xiv) The Government has a special responsibility to ensure that extra-constitutional centres of power are not allowed to grow and if and when located, to snuff them out ruthlessly.

(Para 15.22)

- (xv) Specific instructions should be issued emphasising that the detenus must be treated with dignity and respect due to them and the restraint imposed upon them will be minimal and consistent only with ensuring the safety of the state or interests of law and order and that student detenus will be permitted to take their periodical examinations. For female detenus special provisions should be made for housing them and extending to them appropriate conveniences.

(Para 15.23)

- (xvi) The practice of continuing in service as Heads of the organisations, retired officers on short-term renewable basis is a pernicious practice and often a source of serious abuse of authority.

(Para 15.24)

- (xvii) Departments like the Income-tax Department, Intelligence Bureau, CBI, Enforcement Directorate etc. should be led by strong competent and self respecting individuals who are known for their appreciation of values and their concern for the interests of the country and its citizens. Lesser men as Heads of such organisations which play a vital role in the life of the nation would only be a disaster.

(Para 15.24)

- (xviii) For the effective and objective functioning of the Intelligence agencies, their activities and achievements should be suitably over seen and evaluated by responsible forums composed of persons specially selected for their integrity and sense of public duty and functioning independently of the Intelligence agencies.

(Para 15.26)

- (xix) The Commission has drawn the Government's attention to the guidelines dividing the government servants into three broad categories. Only those who had exceeded or misused or abused their powers or authority for securing personal gains or for securing advantage to other individual(s) / organisation(s) have attracted the critical attention of the Commission.

(Para 15.26)

- (xx) The Commission would like to reiterate that it would reckon its achievement not by

the number or the seriousness of the punitive actions taken against persons who had transgressed the laws, but by the nature and extent of the remedial and ameliorative actions that follow the labours of the Commission.

(Para 15.28)

- (xxi) If the Commission's observations generate a public debate on some of the vital issues focused by the Commission with the object of devising corrective machinery and remedial action, the Commission's labour will be amply rewarded.

(Para 15.29)

CHAPTER XVI

Wrongful 'confinement and torture of Shri Lawrence Fernandes by the Police and Maltreatment in Jail

- (i) The Commission is of the view that the statement of Shri Lawrence that he was taken away from his house and kept in illegal police custody from May 1, 1976 is true.

(Para 16.5)

- (ii) The Commission has no hesitation in disbelieving the story of Inspector Prameswarappa (relating to his visit to K. G. General Hospital Casualty Ward). The story is false and is invented in an effort to save himself and his colleagues from the probable consequences of the illegal police detention and torture of Shri Lawrence. The cumulative effect of his statements leave no room for doubt that they are a tissue of falsehoods.

(Para 16.11)

- (iii) It is established beyond doubt that Shri Lawrence was in the illegal custody of the police from the night of May 1, 1976, and that he had been subjected to physical torture which necessitated his examination by two different doctors on two different dates : on the nights of 3rd and the 7th May, 1976.

(Para 16.12)

- (iv) The story related by the Police officers that Shri Lawrence was arrested on May 10, 1976 at Devangere at a bus stand bears a clear impress of fabrication and untruth.

(Para 16.17)

- (v) The circumstances in which Shri Lawrence was reported to have been arrested by Shri Visveshwariah, an investigating officer, is a story which is entirely incredible.

(Para 16.20)

- (vi) The Commission is inclined to accept the testimony of Dr. Krishnappa and Dr. Nagraj that there was a fracture of the left foot of Shri Lawrence since it is corroborated by the attendant symptoms of severe pain, swelling, inability to stand without

support and inability to walk more than a step or two.

(Para 16.38)

- (vii) On the evidence, the conclusion is inevitable that Shri Lawrence was a physically disabled man when he came into the jail due to the torture and ill-treatment by the police and that within the jail premises Shri Chablani (Senior Superintendent of Jails) colluded with the police by delaying the orthopaedic examination of Shri Lawrence as far as he could and also in keeping him away from the other detenus for obvious reasons. The Commission holds Shri Chablani also responsible for not complying with the order of the court, which had asked for a medical report on the physical condition of Shri Lawrence.

(Para 16.40)

- (viii) Shri Lawrence was in unlawful police custody from May 1 to May 9, 1976 during which period he was assaulted by the police, which resulted in several personal injuries to him. For this responsibility is of Shri Visveshwariah, Deputy Superintendent of Police and Inspector Prameswarappa.

(Para 16.43)

- (ix) Shri Vittal Naik was present at the time when Shri Lawrence was produced before the Magistrate on 20th May and Shri Lawrence had complained to the Magistrate about assault on him by the COD people in his presence. Even then Shri Vittal Naik took no steps to make purposeful enquiry. He was under a duty to satisfy himself that Shri Lawrence was not ill-treated while he was in the custody of the Police Station which came within his jurisdiction. The Commission, therefore, is of the view that Shri Vittal Naik is as much responsible for all that happened to Shri Lawrence in the police custody and must share responsibility with Shri Visveshwariah and Inspector Prameswarappa.

(Para 16.44)

- (x) The case diaries of the years of 1975 and 1976, which were purporting to be record of investigations conducted in the years 1975 and 1976 have been found to be written in the forms printed in March 1977. The inference is inevitable that diaries in their original form were found inconvenient and were re-written on the forms printed in March 1977.... Considering the importance and the evidentiary value of case diaries in judicial proceedings, the Commission has no doubt that the original diaries were replaced by fresh diaries and the version of Shri Vittal Naik that he did not initially write the diaries and wrote them only when it was necessary to produce them before the investigating officer, is a false statement.

(Para 16.45)

- (xi) The Commission deems it necessary to draw the attention of the appropriate authorities to the conduct of Shri Vittal Naik which the Commission regards reprehensible.

(Para 16.46)

- (vii) Shri Krishnamurthi Raju, Superintendent of Police, COD, had deliberately ignored the various lapses in the investigation. The Commission is of the view that as Superintendent of Police, he ought to take the full responsibility for everything that happened to Shri Lawrence while in his charge and on account of the activities of his officers. Shri Raju did not take steps to institute an inquiry even when he was told about the allegations that Shri Lawrence had made before the Magistrate. This is a grave omission on the part of a senior and responsible officer of the rank of Superintendent of Police.

(Para 16.47)

- (xiii) Shri Krishnamurthi Raju's complicity comes out in yet another context. Presumably, he did not think it necessary to publish any item in the Crime and Occurrence Sheet regarding Shri Lawrence being an absconder because he was already in custody and no further action was indicated in this regard.

(Para 16.48)

- (xiv) All the four police officers (named earlier) are responsible for illegal detention and torture of Shri Lawrence Fernandes, the primary responsibility resting squarely with Shri Krishnamurthi Raju, Superintendent of Police, Corps. of Detectives, who was the senior most amongst them and with whose knowledge and consent everything else appears to have taken place.

(Para 16.49)

- (xv) Shri Chablani, the Senior Superintendent Jail colluded with the Police officers in gaining time to let the injuries on the person of Shri Lawrence heal by postponing the medical examination of Shri Lawrence by an orthopaedic surgeon. He also failed to comply with the Court's order to submit a medical report on Shri Lawrence. This was a deliberate effort on the part of Shri Chablani with a view to shield the delinquent police officers. The Commission is also of the view that keeping of Shri Lawrence in the corridor of the single cell-barrack was done deliberately with a view to keep all that happened to Shri Lawrence at the hands of the police a secret from the fellow detenus.

(Para 16.50)

- (xvi) This case highlights not only the illegal detention and torture of an individual by the police but a subversion of an entire legal system including the judicial pro-

cess by senior and responsible Government officers. The concerned police officers, have by their conduct, set a very poor example to the members of the Force which they represent. By glibly telling lies on oath, they have attempted to put a premium on perjury. By their conduct they have lowered themselves in the eyes of the public generally and the Police Force in particular and have done more lasting damage to the credibility of the Force as a whole.

(Para 16.51)

- (xvii) Highly placed officers whether they belong to the administrative branch or the police branch are the custodians of the ideals of the service to which they belong. When the leadership of the highly placed officers fails, it reflects directly upon those whom they represent and results in the erosion of discipline and performance of the rank and file. Examined in that light, the conduct of the police officers, as disclosed by the investigation of the Commission, is bound to leave a dark spot upon the reputation of this Service as an institution.

(Para 16.52)

CHAPTER XVII

I. Detention Under Misa of Shri Murali Dhar Dalmia, Chief Advisor, Technological Institute of Textiles, Bhiwani (Haryana)

- (i) The detention order against Shri Dalmia, passed on November 30, 1975, was based upon trumped-up charges and the grounds of detention fail to stand the test of scrutiny. According to Shri Parmanand CID Inspector his report had to be based on "false and concocted materials".
- (Paras 17.7 and 17.8)
- (ii) Shri R. S. Varma, the District Magistrate Bhiwani, made no effort to satisfy himself on the veracity or the adequacy of the grounds of detention and mechanically passed the detention order. (Para 17.9)
- (iii) Parole was granted to Shri Dalmia only when Shri K. K. Birla met Shri Bansilal and successfully pleaded with him for this. Shri Bansilal agreed to grant parole only on conditions that Shri Dalmia would vacate the house that he was occupying and would be away from Delhi for six months.

(Para 17.13)

- (iv) This case highlights the highhandedness and arbitrary conduct of Shri Bansilal in Haryana during the emergency. Various functionaries in the Government fabricated records and concocted grounds to justify an unjustifiable detention order to fulfil the desire of Shri Bansilal regarding the arrest of Shri Dalmia.

(Para 17.15)

- (v) The Chief Minister employed the authority and the resources of the State to wreck his private grudge against a citizen in an unprincipled and unscrupulous manner and Courts felt compelled to hold that they had no power to grant redress.

(Para 17.15)

- (vi) Shri Bansi Lal, even though he had ceased to be the Chief Minister of Haryana, and had become Defence Minister in the Government of India, continued to exercise the same authority and power over the affairs of the State of Haryana as he had done when he was the Chief Minister. . . . The power that he exercised and the manner in which he wielded it would rank him with medieval despots. He grossly misused his position and abused his authority as Chief Minister in ordering the detention of Shri Dalmia. He continued to abuse his position even after he had ceased to be the Chief Minister and became the Defence Minister of the Government of India.

(Para 17.17)

II. Detention of Shri M. L. Kak, Special Correspondent of the Tribune

- (i) Shri Kak's detention was a part of the large scale MISA detention operations that had been mounted all over Haryana on the night of June 25/26, 1975 at the instance of the Chief Minister, Shri Bansi Lal.

(Para 17.19)

- (ii) Shri Rudra has admitted that there were no materials against Shri Kak except that he was generally critical of the then Government in his reporting, and that he brought to the notice of the District Magistrate the crucial fact that sufficient materials to warrant detention under MISA against Shri Kak did not exist. Shri Jain, the District Magistrate has, however, denied that Shri Rudra ever told him, before obtaining the detention orders, that sufficient material for detention of Shri Kak was not available.

(Paras 17.21 and 17.22)

- (iii) In the M.H.A. file dealing with the detention of Shri Kak, the then Joint Secretary (I.S.) had noted "This appears to be a case of misuse of MISA."

(Para 17.25)

- (iv) In the opinion of the Commission Shri Rudra's version seems to be more truthful and correct than that of Shri Jain. The position taken by the District Magistrate that he was told verbally by the Senior Superintendent of Police about the grounds of detention, which he believed to be true and genuine, and he based his detention orders on the version of the SSP, is an attempt to evade his responsibility by shifting the blame on to the SSP Shri Rudra.

(Para 17.28)

- (v) The stand taken by Shri L. M. Jain that he issued the detention order against Shri M. L. Kak only after satisfying himself personally about the grounds for detention does not appear to be consistent with the facts of the situation.

(Para 17.29)

- (vi) Commission has no doubt that the story of Shri Jain is false.

(Para 17.29)

- (vii) In his anxiety to save himself, Shri L. M. Jain seems to have taken recourse to shifting the responsibility on the others. The Commission feels that this officer who was holding the important office of the District Magistrate was a party, under the compulsion of circumstances prevailing at that time, to patently illegal acts, had attempted to shirk his responsibility and has in that process invented a story, which cannot be accepted. By his unbecoming conduct, he has done a disservice to the traditions of the service and the legitimate expectations that the people and the Government have in the service to which he belongs.

(Para 17.31)

III. Harassment and Detention of Cdr. (Reid.) Pritam Datta of Rohtak

- (i) The removal of Cdr. Datta from the membership of the District Soldiers, Sailors and Airmen Board of District Rohtak was not only improper but also violative of the constitution of the D.S.S. & A. Board.

(Paras 17.35 and 17.36)

- (ii) Orders for conducting a raid on the business premises of Cdr. Datta at Rohtak were given to Shri J. K. Duggal, Excise and Taxation Commissioner, Haryana, by Shri Sham Chand, the then Minister of Excise and Taxation, Haryana, at the instance of Shri Bansi Lal and the raid was ordered by Shri Duggal even though there was no information with him of the commission of any irregularities or malpractices by Cdr. Datta.

(Para 17.38)

- (iii) Shri O. P. Taneja, Dy. Excise and Taxation Commissioner, acted with alarming expedition in initiating action against Cdr. Datta and in cancelling his license and closing his godown. No proper warrant was made out and no order in that behalf was recorded.

(Para 17.40)

- (iv) On November 19, 1975, Cdr. Datta was detained under MISA and he had to remain in detention till December 1975. Shri Mehtani had informed Shri S. P. Mittal, D. C., on a number of occasions that the Chief Minister, Shri Bansi Lal was annoyed with Cdr. Datta and wanted his detention under MISA.

- (v) Shri S. H. Mohan, SSP Rohtak has stated that though there were no adverse materials whatsoever to justify Cdr. Datta's detention under MISA, he had to personally prepare a report containing fabricated grounds for detention.

(Para 17.43)

- (vi) Shri R. C. Mehtani who had commenced his career as an L.D.C. in the Haryana Government and had a meteoric rise when he became O.S.D. to the Chief Minister drawing a salary of nearly Rs. 2,300, wielded extraordinary influence and authority in the State of Haryana..... His relations stood to gain by getting Cdr. Datta in trouble. Towards this end, he appears to have grossly misused his official position.

(Para 17.49)

- (vii) Shri Bansilal had issued verbal instructions to the District Magistrate, Shri Mittal, to detain Cdr. Datta in a move to help one Ram Chander who happened to be very close to him. He also acted under the influence of his official assistant, Shri Mehtani, who had a direct personal interest in promoting the business interest of Messrs. Ram Chander and Sons. In the process he stopped short of nothing including the detention of Cdr. Datta on entirely concocted grounds.

(Para 17.53)

- (viii) An innocent citizen who had given the best part of his life to the service of the nation suffered irreparable damage to his reputation and social standing by the vindictive operations of Shri Bansilal and Shri Mehtani. These two persons have grossly misused their position and authority and were responsible for the illegal detention under MISA of an innocent individual for purely personal reasons.

(Para 17.54)

IV. Detention under MISA of Shri Ishwar Lal Choudhary, District Employment Officer, Bhiwani (Haryana)

- (i) Shri Ishwar Lal Choudhary, on receiving a message through the D.S.P. met the Chief Minister Shri Bansilal at his Bhiwani resident. There the Chief Minister in the presence of various district functionaries as well as members of the public accused Shri Choudhary of registering names of the people of Rohtak District in Bhiwani Employment Exchange and without giving any opportunity to him to explain his conduct ordered his detention under MISA. Shri Choudhary was accordingly arrested by the police.

(Para 17.58)

- (ii) This case unfolds a sordid tale of abuse of power, misuse of authority and illustrates Shri Bansilal's capricious and highly arbitrary style of administration. A straightforward and honest officer performing his duties according to rules was detained, because he failed to comply with the irregular requests of Shri Surinder Singh son of Shri Bansilal. The district authorities in their turn meekly and unquestioningly carried out the order of detention of an officer against whom there was nothing on record.

(Para 17.65)

- (iii) The provisions of MISA were misused in a blatant manner because Shri Bansilal wanted it.

(Para 17.65)

V. Harassment and Detention under MISA of Shri Pitambar Lal Goyal

- (i) Shri Bansilal wanted to prevent Shri Goyal from entering the service and so covert efforts were made at his instance to declare Shri Goyal unfit for selection.

(Para 17.68)

- (ii) Immediately after the proclamation of emergency, orders for detention of Shri Goyal under the MISA were issued. Shri Nakai, the SSP, has admitted that there were no materials available against Shri Goyal but he had fabricated the report against him in view of the clear instruction of the State Government.

(Para 17.76)

- (iii) Shri R. S. Varma, the District Magistrate, has admitted that he signed the detention order when there was before him no material whatsoever against Shri Goyal. He has also admitted that in the case of Shri Ram Pratap (father of Shri Pitambar Goyal) detention orders were passed without application of mind.

(Paras 17.77 and 17.82)

- (iv) What Dr. Jain (A.C.) had done... was completely contrary to the conduct expected of a senior and responsible doctor and contrary to medical ethics.... The Commission is of the opinion that he, as the Chairman of the Medical Board, has misused his position and abused his authority in manipulating the medical report on Shri Pitambar Lal Goyal.

(Paras 17.87 and 17.89)

- (v) The evidence of Shri Harnam Singh, SHO, has not been found by the Commission to be reliable.

(Para 17.90)

- (vi)The Commission does not find Shri R. S. Varma, District Magistrate, responsible for any improper conduct with regard to the verification of the character and antecedents of Shri Pitambar Lal Goyal.

(Para 17.90)

(vii) The Commission finds that Shri S. D. Bhambri, the then Chief Secretary in the Haryana Government had no personal grudge against Shri Goyal. The exercise to change the rules was undertaken by Shri Bhambri pursuant to the wishes of Shri Bansilal. The Commission cannot be oblivious to the prevailing conditions in the State of Haryana during the period of emergency and under those circumstances, it would have been difficult for anyone to act as a hero. Even so, considering the position of trust and responsibility that Shri Bhambri held at that point of time, his conduct did not conform to the best traditions of the Administrative Service to which he belongs. (Para 17.92)

(viii) The Commission finds the conduct of Shri Bansilal in regard to this case reprehensible. For purely personal reasons, he grossly misused his position as Chief Minister and abused his authority. He went after three generations of a family to satisfy his appetite for vengeance. In the process, he got the reports fabricated for the sole purpose of denying a young man an office in the Judicial Service which would have made his career. He got Shri Pitambar Lal Goyal, his father, uncle and grandfather detained also. He appears to have pursued his animosity against the Goyal family even when he was appointed as Defence Minister in the Government of India and got the rules changed so as to disable a detenu and particularly Shri Goyal from taking a competitive examination. There is no evidence before the Commission as to the direct involvement of Shri Bansilal, but there is little doubt, on the evidence, that Shri Bansilal was responsible for the change in the rules. (Para 17.94)

(ix) The Commission notes with amazement the statement of Shri B. D. Gupta to the effect that even as Chief Minister, he stood in constant fear of being detained under MISA by Shri Bansilal. This typifies the general atmosphere of fear and uncertainty generated by Shri Bansilal in Haryana during the period of emergency from the effect of which no one from the highest to the lowest was free.

(Para 17.94)

(x) An incumbent to the office of the Chief Minister of a State who should have been the very embodiment of justice and fair-play in all public dealings, has descended in this case to a petty vindictive level to satisfy a personal grudge against the members of a family. (Para 17.94)

VI. Use of Compulsion and Force in implementation of the Family Planning Programme in village Uttawar, District Gurgaon

(i) This raid on village Uttawar was, it appears, planned deliberately by the State officials because of the opposition of the local population to submit to the sterilisation programme of the State Government.

(Para 17.96)

(ii) All indications on the basis of oral and documentary evidence are that Shri S. S. Bajwa (I.G.P., Haryana) was fully aware of what was intended and did happen and agreed with the consequential actions that followed the raid. The Commission accepts his plea that he had been rendered considerably ineffective even in the handling of his officers as it emerges from the letter that he had received from the Home Secretary to the Government of Haryana (where he was advised not to initiate action against any Superintendent of Police without prior approval of the Chief Minister). The Commission would like to observe that it cannot be expected on the one hand, the leadership of the Force to function effectively if, on the other, steps are also taken by the Government to undermine the leadership. (Para 17.124)

(iii) Shri M. K. Miglani, the then Deputy Commissioner, appears to have used his position as the Head of the District, to order the disconnection of the electric supply to the village. He was as much a party to the raid as others were and to everything else that flowed from it. Shri Miglani was interested in fulfilling the family planning target that had been set for him from the State HQ. (Para 17.125)

(iv) Shri Tek Chand, as SSP Gurgaon, was an active participant in the events leading to the raid and following it. The villagers of Uttawar were carried to the sterilisation centre in trucks under police escort.

(Para 17.126)

(v) The three officers were privy to the raid which was planned at the behest of the higher authorities. These officers were powerless to resist the express wishes of the Government of the time. The Commission, therefore, takes a lenient view of the matter as far as the officers themselves are concerned. This is, however, not to minimise the gravity and illegality of what was done to the people of the village both in terms of the raid, sterilisation and the cutting of electricity. (Para 17.127)

(vi) Much concentration of power in the hands of the District Magistrates and the

Sub-Divisional Officers with regard to the career prospects of officials belonging to the other departments insofar as these were governed by the favourable confidential reports of the District Magistrates and the Sub-Divisional Officers on the work and conduct of these officials appears to have been, in no small measure, responsible for the willingness of a large body of officials to carry out improper or unauthorised directions emanating from the District and Sub-Divisional authorities. (Para 17.127)

CHAPTER XVIII

ABUSE OF AUTHORITY—COMPLAINTS ON SERVICE MATTERS INCLUDING PREMATURE RETIREMENTS, DISMISSALS/REMOVAL FROM SERVICE AND SUPERSSESSIONS DURING EMERGENCY

In this Chapter, the Commission has set down certain broad aspects relating to abuse of authority and misuse of power in the matter of treatment meted out to public servants insofar as it related to their service conditions generally and with particular reference to their summary dismissal, compulsory/premature retirements and supersessions.

CHAPTER XIX

ARRESTS AND DETENTIONS

This Chapter deals with in a general way, the detentions under the MISA ordered by the detaining authorities of the respective State Governments. The discussion is intended primarily to compile and set down at one place, on the basis of the records of the respective State Governments, a factual account of the detentions ordered during emergency by the different State Governments as a record of the times.

CHAPTER XX

CONDITIONS IN JAILS IN INDIA WITH SPECIAL REFERENCE TO TREATMENT OF PERSONS ARRESTED UNDER THE DISIR OR DETAINED UNDER THE MISA ETC.

The Commission sent out a questionnaire to all the States requesting information on certain relevant topics. The officers of the Commission also visited Jails in different parts of the country, in an effort to make an on-the-spot study of the jail conditions. Information contained in this Chapter has been compiled on the basis of such replies and visits. Effort has been made to keep the reports on the Jail Conditions as factual as possible and shorn of any comments whatever except recording a few suggestions for the consideration of the Government.

CHAPTER XXI

IMPLEMENTATION OF THE FAMILY PLANNING PROGRAMME DURING THE EMERGENCY

This Chapter deals with the manner in which the Family Planning Programme was implemented by the Central and State Governments from time to time during the period of emergency.

CHAPTER XXII

DEMOLITIONS DURING EMERGENCY

The Commission had issued a detailed questionnaire on demolition to all State Governments and Union Territories seeking information on various aspects of the demolition programme carried out in the States. Some general aspects and the salient points emerging from the replies received from the States have been discussed in this Chapter.

CHAPTER XXIII

COMPLAINTS AND THEIR DISPOSAL WITH REFERENCE TO THE ISSUE OF REFERENCE

In this Chapter, details have been given regarding the total number of complaints received by the Commission, how these were categorised, classified, investigated and disposed of.

CHAPTER XXIV

GENERAL OBSERVATIONS

- (i) The one single item which had affected the people most over the entire country was the manner in which the powers under the amended MISA were misused at various levels.
(Para 24.2)
- (ii) A large number of officers exercising the powers of District Magistrates obediently carried out the instructions emanating from politicians and administrative heads issued on personal or political considerations..... Such conduct on the part of responsible officers is not in consonance with the best traditions of the Services to which they belonged and of the ethical considerations governing the exercise of such powers. (Para 24.3)
- (iii) Some Officers did not have the courage to do the right thing during the emergency: they have not the character to face the truth now and own up their past wrongs. (Para 24.4)
- (iv) The manner in which the MISA detentions were ordered, should be a lesson to the peoples' representatives in the Legislature as to how a Statute, initially well-conceived,

may be misused for purposes totally alien to its object and intentions of its framers It is time that some mechanism is devised to ensure that such enactments are subjected to a periodical review by the framers themselves.

(Para 24.5)

- (v) In several cases, large scale fabrication of records has been admitted. Means should be devised to ensure that these concocted records are not used again to the disadvantage or detriment of the individuals concerned.

(Para 24.6)

- (vi) It is a matter of concern to the Commission that the (then) prevailing acts of impropriety and immorality came to be accepted as a concept of a new propriety and a new morality.

(Para 24.7)

- (vii) It is necessary to provide certain institutional safeguards to look after the interests of the entire run of officials and particularly those who are involved at the decision making levels of the Government.

(Para 24.8)

- (viii) Detention of an officer who had reputation for integrity, for not carrying out orders which were plainly unwarranted and which amounted to a flagrant and unpardonable misuse of authority by a politician has a very important and telling lesson for the nation as a whole. . . . if this instance is projected on the national scale, a political authority may decide to penalize an officer for tendering an advice or taking a decision the operational effect of which, albeit beneficial, transcends the territorial boundaries of the State to embrace the interest of the country as a whole. . . . Public servants are expected to function in the interest of the country as a whole and not subserve a narrow sectarian or regional interest of politicians.

(Para 24.9)

- (ix) It is imperative to ensure that the officials at the decision making levels are protected and immunised from threats or pressures so that they can function in a manner in which they are governed by one single consideration the promotion of public well-being and the upholding of the fundamentals of the Constitution and the rule of law.

(Para 24.10)

- (x) It is hoped that the authorities both at the Centre and the States will look at some of the cases in which aberrations have been pin-pointed by the Commission in a spirit of honest inquiry and determine what went

wrong not only in each individual case but generally and how a similar situation can and should be averted in the future.

(Para 24.11)

- (xi) Commitment by the public servants means only and entirely commitment to the policy and programmes of the Government in so far as these are in conformity with the rule of law and fundamentals of the Constitution. . . . Public servants have to be politically neutral at all levels and at all times. . . . It is expected of the Services that they would tender frank, informed and well-considered advice without getting personally involved in their present position or their future advancement.

(Para 24.12)

- (xii) The Government must encourage its employees to function freely and fearlessly within the framework of established principles, making it clear that deviation from established procedures without justification would be dealt with severely.

(Para 24.13)

- (xiii) It is necessary for the Government to appreciate the need for defining the various functions and powers of the several lower functionaries who are in close proximity to the seats of power. . . . The circumstances under which the personal staff including special assistants and the private secretaries attached to the Ministers could convey orders be defined precisely and safeguards should be provided for check-back in the event of doubt or difference of opinion.

(Para 24.14)

- (xiv) The trend in democratic Governments today is in favour of more and more open functioning. The benefit of experience of such working may be availed of for such action as may be feasible, practicable and desirable in the context of our own peculiar needs and conditions.

(Para 24.15)

- (xv) It is necessary to devise adequate and appropriate safeguards to ensure that powers available to the Government to prematurely retire an employee are not arbitrarily used without any scope for redressal of the employee's grievances. "Droit Administratif" on the French Model can be usefully adopted by the Government.

(Para 24.16)

- (xvi) What happened during the Emergency was the subversion of a system of administration. To avoid recurrence the system must be overhauled with a view to strengthen it so that it could work in a free atmosphere and in a spirit calculated to promote the

integrity and welfare of the nation and the rule of law.

(Para 24.17)

(xvii) The events during the Emergency are merely the tragic culmination of the particular trend that had been identified and condemned from time to time by the Commissions of Inquiry in the past. The Commission owes it to the citizens of India to emphasise that appointments of Commissions by themselves are not enough if the Governments concerned do not follow up and implement such of the recommendations as are avowedly accepted by them.

(Para 24.18)

(xviii) If administrative machinery in our country is to be rendered safe for our children, the Services must give a better account of themselves by standing up for the basic values of an honest and efficient administration. This alone can resurrect the peoples' lost faith once again in our Services. If a democratic heritage is to be left for future generations, we should want the truth again to be enshrined in its legitimate place in the social, economic and political scheme of things in our

country. There is nothing unattainable or profound in this. It is a simple human message.

(Para 24.19)

CHAPTER XXV

CONCLUSION

(i) The Commission had to be selective in the matter of hearing of cases in open session not because the Commission did not appreciate the gravity of the allegations made by aggrieved persons but because of the fact that it would have been impossible to do so in all the cases and complete the job within the foreseeable future. The State Governments have appointed Authorities and the Commission trusts that the proceedings will be disposed of by them expeditiously latest by December 31, 1978.

(Para 25.1)

(ii) All the officers and staff of the Commission deserve high praise for the single-minded devotion to duty that they have exhibited in the discharge of functions at various levels.

(Para 25.6)

APPENDIX A

Persons to whom notices under rule 5(2)(a) of the Commissions of Inquiry (Central) Rules, 1972, and summons under section 88 of the Commissions of Inquiry Act, 1952, were issued

<i>Case</i>	<i>Name</i>
1. Case of Mr. Justice R.N. Agarwal.	1. Smt. Indira Gandhi.
2. Case of Mr. Justice U.R. Lalit.	1. Smt. Indira Gandhi.
3. Appointment of Shri K.R. Puri, ex-Chairman of the Bank of India.	1. Smt. Indira Gandhi.
4. Appointment of Shri T.R. Vardachary, Chairman, SBI.	1. Shri Pranab kumar Mukherjee.
5. Appointment of Shri T.R. Tuli as Chairman and Managing Director of Punjab National Bank.	1. Smt. Indira Gandhi.
6. Misuse of power and institution of false criminal charges against four senior officials by the CBI at the instance of Smt. Indira Gandhi, the then Prime Minister.	1. Shri D. Sen. 2. Shri R.K. Dhawan. 3. Smt. Indira Gandhi.
7. Unlawful detention of Textile/Customs employees under MISA by Delhi Admn. and institution of false CBI cases against four of them.	1. Shri N.K. Singh. 2. Shri P.S. Bhinder. 3. Shri Balwant Singh. 4. Shri D. Sen. 5. Shri R.K. Dhawan. 6. Smt. Indira Gandhi.
8. Misuse of power and miscarriage of justice by framing evidence with intention to save Shri Sudershan Kumar Verma, a clerk in the Railways from legal punishment by the CBI officials.	1. Shri D. Sen.
9. Clean overdraft by Punjab National Bank to Associated Journal Ltd.	1. Shri T.R. Tuli.
10. Facility provided by Punjab National Bank to M/s. KRSMA Chemicals Private Ltd.	1. Shri T.R. Tuli.
11. Concession by Punjab National Bank in favour of Maruti Ltd.	1. Shri T.R. Tuli.
12. Deviation from the established procedure and irregularities in the reconstitution of the Boards of Air India and Indian Airlines.	1. Smt. Indira Gandhi.
13. Detention of Smt. Gayatri Devi and Lt. Col. (Retd.) Bhawani Singh under COFEPOSA.	1. Shri Pranab Kumar Mukherjee.
14. Detention of Shri Bhim Sen Sachar and seven others.	1. Smt. Indira Gandhi. 2. Shri R.K. Dhawan.
15. Improprieties committed in regard to Shri Mangal Bihari, IAS of Rajasthan cadre and termination of the services of Smt. Chandrawati Sharma, Assistant Teacher.	1. Smt. Indira Gandhi. 2. Shri Harideo Joshi. 3. Shri R.K. Dhawan.
16. Harassment of T.U. leaders by use of search and seizure operation by the Income Tax Deptt.	1. Shri D. Sen. 2. Shri R.K. Dhawan.
17. Baroda Rayon Corporation's case.	1. Shri Harihai Lal. 2. Shri S.R. Mehta. 3. Shri Pranab Kumar Mukherjee.
18. Search and seizure operation by Income Tax Department in the case of M/s. Bajaj Group.	1. Shri Harihar Lal. 2. Shri S.R. Mehta.
19. Special instructions relating to Maruti Ltd.	1. Shri S.R. Mehta.
20. Import of Aircraft by Shri Dharendra Brahamachari.	1. Shri Dharendra Brahamachari. 2. Shri A.M. Sinha. 3. Shri S.B. Jain.
21. Issue of detention orders under MISA.	1. Shri Krishan Chand. 2. Shri K.S. Bajwa. 3. Shri Navin Chawla. 4. Shri P.S. Bhinder.

22. Confirmation of detention order by Lt. Govr. four monthly review and working of the Administrative Review Committee.
 1. Shri Krishan Chand.
 2. Shri Navin Chawla.
23. Treatment in Jails.
 1. Shri Krishan Chand.
 2. Shri Navin Chawla.
24. Parole:
 1. Shri Krishan Chand.
25. Attitude of Delhi Admn. towards MHA.
 1. Shri Krishan Chand.
 2. Shri Navin Chawla.
26. Use of MISA against ordinary criminals.
 1. Shri Krishan Chand.
27. Use of MISA against violators of Delhi Admn. (Display of Prices of Articles) Orders, 1975.
 1. Shri Krishan Chand.
28. Detention of Shri Virendra Kapoor.
 1. Shri Krishan Chand.
 2. Shri P.S. Bhinder.
 3. Shri K.S. Bajwa.
29. Detention of Shri Karunesh Shukla.
 1. Shri Krishan Chand.
 2. Shri K.S. Bajwa.
30. Detention of Shri Pravir Purkayastha.
 1. Shri Krishan Chand.
 2. Shri P.S. Bhinder.
31. Detention of Vaid Guru Dutt.
 1. Shri Krishan Chand.
32. Detention of Shri Mam Chand.
 1. Shri Krishan Chand.
 2. Shri P.S. Bhinder.
33. Requisitioning of Vishwa Yuvah Kendra.
 1. Smt. Indira Gandhi.
 2. Shri V.C. Shukla.
 3. Shri Krishan Chand.
34. Harassment of M/s. Pandit Brothers.
 1. Shri Sanjay Gandhi.
 2. Shri Krishan Chand.
35. Detention of Shri Murlidhar Dalmia.
 1. Shri Bansi Lal.
36. Detention of Sh. M. L. Kak.
 1. Shri Bansi Lal.
 2. Shri L.M. Jain.
37. Detention of Shri Pritam Dutta.
 1. Shri Bansi Lal.
 2. Shri R.C. Mehtani.
38. Detention of Shri Ishwar Lal Chowdhary.
 1. Shri Bansi Lal.
39. Family Planning Programme in village Uttawar.
 1. Shri S.S. Bajwa.
 2. Shri M.K. Miglani.
 3. Shri Tek Chand.
40. Detention of Shri Pitambar Lal Goyal.
 1. Shri Bansi Lal.
 2. Shri S.D. Bhambri.
 3. Shri R.S. Varma.
 4. Shri A.C. Jain.
41. Circumstances leading to declaration of Emergency.
 1. Smt. Indira Gandhi.
42. Preparation of election posters by DAVP artists.
 1. Shri Vidya Charan Shukla.
43. Translation of Congress Election Manifesto by AIR and DAVP translators.
 1. Shri Vidya Charan Shukla.
44. Banning of songs of Shri Kishore Kumar over AIR and T.V. etc.
 1. Shri Vidya Charan Shukla.
45. Demolition in Kapas Hera.
 1. Shri Sanjay Gandhi.
 2. Shri B.R. Tamta.
 3. Shri Jagmohan.
 4. Shri Satya Prakash.
 5. Shri Ranbir Singh.
46. Demolition in Samalkha.
 1. Shri B.R. Tamta.
47. Demolition in Andheria Mor.
 1. Shri Sanjay Gandhi.
 2. Shri B.R. Tamta.
48. Demolition in Karol Bagh.
 1. Shri Sanjay Gandhi.
 2. Shri B.R. Tamta.

49. Pressurising Magistrates to sign a back-dated firing order
 1. Shri Sanjay Gandhi
 2. Shri P.S. Bhinder.
50. Demolition in Bhagat Singh Market
 1. Shri V.S. Ailawadi.
51. Demolition in Turkman Gate
 1. Shri P.S. Bhinder
 2. Shri Jagmohan
 3. Shri H.K. Lal.
52. Demolition in Sultanpur Mazra
 1. Shri Jagmohan
 2. Shri Satya Prakash
 3. Shri Ranbir Singh.
53. Demolition in Arjun Nagar
 1. Shri Jagmohan
 2. Shri Satya Prakash
 3. Shri Ranbir Singh.
54. Demolition of Arya Samaj Temple
 1. Shri Jagmohan
 2. Shri S.M. Dua.
55. Demolition in Jahangirpur
 1. Shri Jagmohan
 2. Shri Satya Prakash
 3. Shri Ranbir Singh.
56. Alleged wrongful confinement and torture of Shri Lawrence Fernandes.
 1. Shri H.S. Visveswariah
 2. Shri C.R. Parameswarappa
 3. Shri H.L. Chablani
 4. Shri M.V.K. Raju
 5. Shri K. Vittal Naik.
57. Detention under MISA of Shri Jayapal
 1. Shri Shankarappa
58. Detention under MISA of Shri Shivananda
 1. Shri Shankarappa.
59. Detention under MISA of Shri Rama Jais
 1. Shri M.L. Chandrasekhar.

APPENDIX B

Persons against whom Commission ordered filing of complaints under sections 178 and 179 IPC for refusing to take oath or give evidence on oath

<i>Name</i>	<i>Case</i>
1. Smt. Indira Gandhi	1. Case of Mr. Justice R.N. Agarwal. 2. Case of Mr. Justice U.R. Lalit. 3. Appointment of Shri K.R. Puri, ex-Chairman of Bank of India. 4. Appointment of Shri T.R. Tuli as Chairman and Managing Director of Punjab National Bank. 5. Misuse of power and institution of false cases against four senior officials by the CBI at the instance of Smt. Indira Gandhi, the then Prime Minister. 6. Unlawful detention of textile/customs employees under MISA by Delhi Admn. and institution of false cases against four of them. 7. Deviation from the established procedure and irregularities in reconstitution of the Boards of Air India and Indian Airlines. 8. Detention of Shri Bhim Sen Sachar and seven others. 9. Improprieties committed in regard to Shri Mangal Bihari, IAS of Rajasthan cadre and termination of the services of Smt. Chandrawati Sharma, Assistant Teacher. 10. Requisitioning of Vishwa Yuvak Kendra.
2. Smt. Indira Gandhi	1. Circumstances leading to declaration of emergency.
3. Shri Pranab Kumar Mukherjee	1. Appointment of Shri T.R. Varadachary as Chairman SBI. 2. Detention of Smt. Gayatri Devi and Lt. Col. (Retd.) Bhawani Singh under COFEPOSA. 3. Case of Baroda Rayon Corporation.
4. Shri Dharendra Brahmachari.	1. Import of Aircraft by Shri Dharendra Brahmachari and related matters.
5. Shri Sanjay Gandhi	1. Harassment of M/s. Pandit Brothers. 2. Demolition in Kapas Hera. 3. Demolition in Andheria Mor. 4. Demolition in Karol Bagh. 5. Pressurising Magistrates to sign a back-dated firing order.
6. Shri Bansi Lal	1. Detention of Shri Murlidhar Dalmia. 2. Detention of Shri M.L. Kak. 3. Detention of Shri Pritam Dutta. 4. Detention of Shri Ishwar Lal Chowdhary. 5. Detention of Shri Pitambar Lal Goyal.

APPENDIX—C

List of witnesses who appeared before the Commission

NOTE:— Designation, where known, has been indicated. Designation of public servants indicates the office held by them during the Emergency.

Case : *Reversion of Justice R.N. Agarwal of Delhi High Court and Refusal to extend the term of Justice U.R. Lalit of Bombay High Court.*

Sl. No.	Name of Witness
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1. Shri H.R. Gokhale, Minister for Law, Justice and Company Affairs, Government of India.
2. Shri S.L. Khurana, Home Secretary, Government of India.
3. Shri S.N. Mathur, Director, Intelligence Bureau.

Case : *Misuse of power and institution of false criminal cases against 4 senior officials of Ministry of Commerce and Industrial Development, by the CBI, at the instance of Smt. Indira Gandhi, the then Prime Minister.*

1. Shri R. Krishnaswamy, Deputy Secretary, Ministry of Industries, Government of India.
2. Shri L.R. Cavale, Chief Marketing Manager, Projects and Equipment Corporation.
3. Shri P.S. Bhatnagar, Deputy Marketing Manager, Projects and Equipment Corporation.
4. Shri T.A. Pai, Minister for Industries, Govt. of India.
5. Shri D. Sen, Director, CBI.
6. Shri A.B. Chaudhury, Joint Director, CBI.
7. Shri D.P. Chattopadhyaya, Minister for Commerce, Government of India.
8. Shri K. Vijayan, Supdt. of Police, CBI.
9. Shri Y. Rajpal, Dy. I.G. of Police, CBI.
10. Shri S.K. Bharij, Assistant Development Officer, DGT & D (Statement read out).
11. Shri A.S. Rajan, Development Officer, DGT & D.
12. Shri B.M. Lal, Resident Manager, Batliboi & Co.
13. Shri J.S. Mathur, Liaison Officer, Batliboi and Co. Ltd. (Statement read out).
14. Shri R.K. Dhawan, Addl. Private Secretary to the Prime Minister.
15. Shri U.S. Joshi, Chief Vigilance Officer, State Trading Corporation.
16. Shri S.S. Khosla, Development Officer, DGT & D (Statement read out).
17. Shri L.M. Adeshra, Manager, Batliboi & Co. Ltd.

Case : *Misuse of power and miscarriage of justice by framing evidence with intent to save Shri Sudarshan Kumar Sharma, LDC in the Railways from legal punishment, by CBI officials.*

1. Shri D. Sen, Director, CBI.
2. Shri M. Dayal, Vigilance Officer, Northern Railway.
3. Shri A.P. Mukherjee, Dy. I.G. of Police, CBI.
4. Shri Gopal Das, Loco Shed man, Northern Railway, Delhi.

Case : *Deviation from established procedure for selection of officers for top level executive posts in Public Sector Undertakings in the case of Air Marshal H.C. Dewan as Chairman IAAI.*

1. Shri Raj Bahadur, Minister for Tourism and Civil Aviation, Government of India.

Case : *Deviation from established procedure and irregularities in the reconstitution of Board of Directors of Air India and Indian Airlines.*

1. Shri Raj Bahadur, Minister for Tourism and Civil Aviation, Government of India.
2. Shri R.K. Dhawan, Addl. Private Secretary to the Prime Minister.
3. Shri N.S. Bhatnagar, Special Assistant to the Minister for Tourism and Civil Aviation, Government of India.
4. Shri P.C. Lal, Chairman, IAC.

Case : *Deviation from established procedure for the selection of officers for top level executive posts in Public Sector Undertakings in the case of Lt. General J.T. Satarawala—as Chairman-cum-Managing Director, ITDC.*

1. Shri Raj Bahadur, Minister for Tourism and Civil Aviation, Government of India.

Case : *Appointment of Shri K.R. Puri as Governor, Reserve Bank of India.*

1. Shri C. Subramaniam, Minister for Finance, Government of India.

Case : *Appointment of Shri T.R. Varadachari as Chairman, State Bank of India.*

1. Shri N.C. Sen Gupta, Secretary, Department of Banking, Government of India.

Case : *Harassment of Trade Union Leaders S/Shri D.P. Chadha and Prabhat Kar.*

1. Shri Harihar Lal, Director of Inspection, Income Tax (Investigation).
2. Shri D. Sen, Director, CBI.
3. Shri R.K. Dhawan, Addl. Private Secretary to the Prime Minister.
4. Shri V.R. Vaidya, Deputy Director of Inspection (Intelligence) Income Tax, Bombay.
5. Shri V.S. Wahi, Assistant Director of Inspection (Intelligence) Income Tax, Delhi.

Case : *Baroda Rayon Corporation — Search and Seizure under section 172 of I.T. Act.*

1. Shri Harihar Lal, Director of Inspection (Investigation) Income Tax.
2. Shri V.R. Vaidya, Deputy Director of Inspection (Intelligence) Income Tax, Bombay.
3. Shri S.R. Mehta, Chairman, Central Board of Direct Taxes.
4. Shri S.N. Shinde, Deputy Director of Inspection (Intelligence) Income Tax, Delhi.

Case : *Appointment of Shri T.R. Tuli as Managing Director of Punjab National Bank Limited.*

1. Shri C. Subramaniam, Minister for Finance, Government of India.
2. Shri M.G. Balasubramaniam, Addl. Secretary, Ministry of Finance, Government of India.

Case : *Misuse of Media—Media Governmental and non-governmental in connection with the Lok Sabha Elections, 1977.*

1. Shri Ajit Bhattacharya, Deputy Chief Editor, Indian Express, New Delhi.
2. Shri A.R. Baji, Principal Information Officer, Directorate of Field Publicity, Ministry of Information and Broadcasting.
3. Shri V.S. Tripathi, Special Assistant to the Minister of Information and Broadcasting.
4. Shri Birendra Narayan, Director, Song and Drama Division, Ministry of Information and Broadcasting.
5. Shri C.K. Arora, Special Correspondent, Samachar, New Delhi.
6. Shri D.V. Desai, Special Correspondent, Samachar, New Delhi.
7. Shri Girilal Jain, Editor, Times of India, New Delhi.
8. Shri G.R. Rao, News Editor, News Services Division, All India Radio, New Delhi.
9. Smt. G. Mukherji, Assistant Editor, Directorate of Advertising and Visual Publicity.
10. Shri H.Y. Sharda Prasad, Information Advisor to the Prime Minister.
11. Shri H. Karlekar, Editor, Hindustan Times, New Delhi.
12. Shri J. Bhattacharjee, Chief Visualiser, DAVP.
13. Shri L. Dayal, Principal Information Officer, PIB, Ministry of Information and Broadcasting.
14. Shri M.I. Malik, Deputy Director General, Doordarshan, New Delhi.
15. Shri M.P. Lale, Assistant Station Director, Delhi Doordarshan Kendra.
16. Shri M.K. Sathe, Senior Correspondent, Samachar, New Delhi.
17. Shri K.N. Prasad, Addl. Secretary, Ministry of Information and Broadcasting.
18. Shri K.S. Srinivasan, Senior Copy Writer, DAVP.
19. Shri K.P.K. Kutty, News Editor, Samachar, New Delhi.
20. Shri Kanshi Ram, Driver, Directorate of Advertising and Visual Publicity.
21. Shri N.L. Chawla, Addl. Director General, Doordarshan.
22. Shri N. Bhaskar Rao, Visiting Professor, Doordarshan.
23. Shri P.S. Kasbekar, Editor (English Division), Samachar, New Delhi.
24. Shri P.V. Krishnamurthi, Director General, Doordarshan.
25. Shri S.C. Bhatt, Director, News Services, All India Radio.
26. Shri Shiv Shankar Sharma, Controller of Programmes, Doordarshan, New Delhi.
27. Shri S.M.H. Burney, Secretary, Ministry of Information and Broadcasting.
28. Shri S. Sahai, Editor, Statesman, New Delhi.
29. Shri U.R. Kalkur, Samachar, New Delhi.
30. Shri V.C. Shukla, Minister for Information and Broadcasting, Government of India.
31. Shri V.S. Gopalkrishnan, Director (Vigilance), Ministry of Information and Broadcasting.
32. Shri W. Lazarus, Acting General Manager, Samachar.

Case : *Ban on using songs of Kishore Kumar.*

1. Shri C.B. Jain, Joint Secretary, Ministry of Information and Broadcasting.
2. Shri S.M.H. Burney, Secretary, Ministry of Information and Broadcasting.
3. Shri V.C. Shukla, Minister for Information and Broadcasting, Govt. of India.

Case : Appointment of part-time correspondents of AIR

1. Shri V.C. Shukla, Minister for Information and Broadcasting, Govt. of India.
2. Shri S.M.H. Burney, Secretary, Ministry of Information and Broadcasting.

Case : Aberrations in the advertising policy of the Government during emergency

1. Shri A.R. Baji, Principal Information Officer, Directorate of Field Publicity, Ministry of Information and Broadcasting.
2. Shri C.K. Sharma, Private Secretary to the Minister for Information and Broadcasting.
3. Shri C.S. Grewal, Deputy Director (Advt.), Directorate of Advertising and Visual Publicity.
4. Shri Harnam Singh, Media Secretary, DAVP.
5. Shri K.N. Prasad, Addl. Secretary, Ministry of Information and Broadcasting.
6. Shri S.M.H. Burney, Secretary, Ministry of Information and Broadcasting.
7. Shri V.C. Shukla, Minister for Information and Broadcasting, Govt. of India.

Case : Formation of Samachar

1. Shri C.P. Maniktala, Editor, Samachar, New Delhi.
2. Shri C.L. Bhardwaj, Spl. Correspondent, Samachar, New Delhi.
3. Shri G. Kasturi, Chairman, Samachar Board, Samachar.
4. Shri G.G. Mirchandani, General Manager, UNI.
5. Shri L. Dayal, Principal Information Officer, PIB, Ministry of Information and Broadcasting.
6. Shri K.N. Prasad, Addl. Secy., Ministry of Information and Broadcasting.
7. Shri P.S. Kasbekar, Editor (English Division), Samachar.
8. Shri P.C. Gupta, Managing Editor, Jagran, Kanpur.
9. Shri Raj K. Nigam, Executive Member, Samachar, New Delhi.
10. Shri R.S. Tarneja, General Manager, Benatt Coleman and Co. Ltd. and Member, Samachar Board, Samachar.
11. Shri S.M.H. Burney, Secretary, Ministry of Information and Broadcasting.
12. Shri V.C. Shukla, Minister for Information and Broadcasting.
13. Shri W. Lazarus, Acting General Manager, Samachar.

Case : News media Management Policy of Government during the period of emergency

1. Shri A.R. Baji, Principal Information Officer, Directorate of Field Publicity, Ministry of Information and Broadcasting.
2. Shri A.D. Gorwala, Editor 'Opinion', Bombay.
3. Shri B.N. Mehrotra, General Manager, Delhi Electric Supply Undertaking.
4. Shri B.G. Verghese, Journalist.
5. Shri Chanchal Sarkar, Director, Press Institute of India.
6. Shri C. Raghavan, Editor-in-Chief, Press Trust of India.
7. Shri 'Cho' Ramaswami, Editor 'Tughlaq', Madras.
8. Shri H.J. D'Penha, Chief Censor, Government of India, New Delhi.
9. Shri Krishan Chand, Lt. Governor, Delhi.
10. Shri K.N. Prasad, Addl. Secretary, Ministry of Information and Broadcasting.
11. Shri K.K. Kapil, Jt. Chief Producer, Films Division, Ministry of Information and Broadcasting.
12. Shri Nikhil Chakravarty, Editor 'Mainstream', New Delhi.
13. Shri Navin Chawla, Secretary to the Lt. Governor, Delhi.
14. Shri Ramesh Thapar, Editor, Seminar, New Delhi.
15. Shri Raj Mohan Gandhi, Editor, 'Himmat', Bombay.
16. Shri S.C. Bhatt, Director, News Services, All India Radio.
17. Shri S.M. Joshi, Managing Editor 'Sadhana', Pune.
18. Shri K.S. Ramakrishnan, Chief Editor, 'Yojna', Yojna Bhavan, New Delhi.
19. Shri S.B. Das Gupta, Registrar of Newspapers of India.
20. Shri V.C. Shukla, Minister for Information and Broadcasting.
21. Shri S.M.H. Burney, Secretary, Ministry of Information and Broadcasting.

Case : Translation of Congress Manifesto by Translators of DAVP and AIR

1. Shri A.K. Roy, Deputy Director (News), News Services Division, All India Radio.
2. Shri A.R. Ranga Rao, News Reader-cum-Translator, All India Radio.
3. Shri B.R. Bowry, ex-Director, Public Relations, Press Information Bureau, Ministry of Information and Broadcasting.
4. Shri B.K. Saikia, Assistant Editor, Directorate of Advertising and Visual Publicity.
5. Shri C.R. Mandal, Assistant Editor, Directorate of Advertising and Visual Publicity.
6. Shri D.N. Swadia, Assistant Editor, Directorate of Advertising and Visual Publicity.
7. Shri D. Dholakia, News Reader-cum-Translator, All India Radio.
8. Shri D.N. Munshi, Director, Public Relations, Press Information Bureau, Ministry of Information and Broadcasting.

9. Smt. G. Mukherji, Assistant Editor, Directorate of Advertising and Visual Publicity.
10. Shri G.P. Sohoni, Assistant Editor, Directorate of Advertising and Visual Publicity.
11. Shri G.R. Rao, News Editor, News Services Division, All India Radio.
12. Smt. I. Kale, News Reader-cum-Translator, All India Radio.
13. Kumari I. Nag, News Reader-cum-Translator, All India Radio.
14. Miss J. Mangamma, Asstt. Editor, Directorate of Advertising and Visual Publicity.
15. Shri K.N. Prasad, Addl. Secretary, Ministry of Information and Broadcasting.
16. Shri K.L. Srikrishna Das, Assistant Editor, Directorate of Advertising and Visual Publicity.
17. Shri K.S. Srinivasan, Senior Copywriter, Directorate of Advertising and Visual Publicity.
18. Shri M. Kolaindivelu, Assistant Editor, Directorate of Advertising and Visual Publicity.
19. Shri N. Rehman, News Reader-cum-Translator, All India Radio.
20. Shri N.K. Sampath, Assistant Editor, Directorate of Advertising and Visual Publicity.
21. Shri O.P. Giri, Chief Accountant, All India Congress Committee, New Delhi.
22. Shri P.C. Chatterjee, Director General, All India Radio.
23. Shri P.K. Tripathi, Assistant Editor, Directorate of Advertising and Visual Publicity.
24. Shri Ranoo Basu, Administrative Officer, All India Congress Committee, New Delhi.
25. Shri S.C. Bhatt, Director, News Services, All India Radio.
26. Shri S. Batra, News Reader-cum-Translator, All India Radio.
27. Shri V.C. Shukla, Minister for Information and Broadcasting, Govt. of India.
28. Shri S.S. Sarna, News Editor, All India Radio.
29. Shri H.K. Ramakrishna, News Reader-cum-Translator, All India Radio.
30. Shri R.S. Venkataraman, News Reader-cum-Translator, All India Radio.
31. Shri V.S. Tripathi, Special Assistant to the Minister for Information and Broadcasting.
32. Shri Kanshi Ram, Driver, Directorate of Advertising and Visual Publicity.

Case : Designing of Election Posters by artists of DAVP

1. Shri K.N. Prasad, Addl. Secretary, Ministry of Information and Broadcasting.
2. Shri A.S. Rao, Production Manager, Directorate of Advertising and Visual Publicity.
3. Shri D.K. Das, Senior Artist, Directorate of Advertising and Visual Publicity.
4. Shri O.P. Giri, Chief Accountant, All India Congress Committee, New Delhi.
5. Shri U.R. Dutta Gupta, Art Executive, Directorate of Advertising and Visual Publicity.
6. Shri V.C. Shukla, Minister for Information and Broadcasting.
7. Shri R.K. Basu, Administrative Officer, All India Congress Committee.
8. Shri Kanshi Ram, Driver, Directorate of Advertising and Visual Publicity.

Case : Unlawful detention of Textile/Customs Inspectors under MISA by Delhi Administration and institution of false cases against four of them

1. Shri R.D. Bhatnagar, Inspector, Textile Committee, Ministry of Commerce.
2. Shri Sushil Kumar, Chief Secy., Delhi Administration, Delhi.
3. Shri S.K. Kapoor, Representative of Lee Muirhead Customs Clearing Agents.
4. Shri Hans Raj, Clerk, M/s. Chaudhary International Clearing Agents.
5. Shri Sudarshan Kumar, Clerk, M/s. K.L. Bharase and Co. Clearing Agents.
6. Shri S.C. Suri, Inspecting Officer, Textile Committee, Ministry of Commerce.
7. Shri Daryao Singh, Inspector, CBI.
8. Shri Surendra Mohan Vohra, Inspector, Customs, New Delhi.
9. Shri A.P. Mukherjee, Dy. IG of Police, CBI.
10. Shri Balwant Singh, Supdt. of Police, Delhi.
11. Shri R.K. Ohri, Supdt. of Police (Central), Delhi.
12. Shri Ashok Pradhan, ADM, Delhi.
13. Shri M.L. Bhadwar, Collector, Central Excise and Customs, Delhi.
14. Shri M.S. Malik, Inspector, Customs, Delhi.
15. Shri S.N. Chatterjee, Assistant Inspecting Officer, Textile Committee, Ministry of Commerce.
16. Shri Asutosh Mukherjee, Inspector, Textile Committee, Ministry of Commerce.
17. Shri V.V. Bhambri, Inspector, Textile Committee, Ministry of Commerce.
18. Shri Ved Prakash, Inspector, Delhi Police.
19. Shri R. Rangaraja, Inspector, Textile Committee, Ministry of Commerce.
20. Shri C.S. Venkatesh, Inspector, Textile Committee, Ministry of Commerce.
21. Shri R.S. Gupta, Inspector, Textile Committee, Ministry of Commerce.
22. Shri S.K. Walia, Inspector, Textile Committee, Ministry of Commerce.
23. Smt. S.K. Walia.

24. Shri B. Wadhawan, Inspecting Officer, Textile Committee, Ministry of Commerce.
25. Shri R.C. Jain, Inspector, Textile Committee, Ministry of Commerce.
26. Shri A.K. Chakravarty, Inspector, Textile Committee, Ministry of Commerce.
27. Shri D.B. Ghosh, Inspector, Textile Committee, Ministry of Commerce.
28. Smt. Shefali Ghosh.
29. Smt. Mythili Rangaraja.
30. Smt. Poornima Chatterjee.
31. Shri Qadam Singh, Clerk, District Education Office, Gurgaon.
32. Shri N.K. Singh, Special Assistant to the Minister for Commerce.
33. Shri Krishan Chand, Lt. Governor, Delhi.
34. Shri S.S. Yadav, Inspector, Customs.
35. Shri R.K. Dhawan, Addl. Private Secretary to the Prime Minister.
36. Shri P.S. Bhinder, Dy. I.G. of Police (Range), Delhi.
37. Shri D. Sen, Director, CBI.
38. Smt. Shailaja Chandra, Special Secretary (Home), Delhi Admn., Delhi.
39. Shri T.R. Kalia, Dy. Secretary, Home, Delhi Administration.
40. Shri V. Rajpal, Dy. I.G. of Police, Delhi.
41. Shri D.P. Chattopadhyaya, Minister for Commerce, Government of India.
42. Shri Bhardwaj, Income Tax Officer.

Case : Decision process leading to purchase of Boeing 737 Aircraft by Indian Airlines.

1. Shri Raj Bahadur, Minister for Tourism and Civil Aviation, Govt. of India.
2. Shri K. Raghuramaiah, Minister for Tourism and Civil Aviation.
3. Shri Nitin Desai, Consultant, Planning Commission.
4. Shri Kirpal Chand, Director (Finance) Indian Airlines.
5. Shri A.H. Mehta, Chairman, Indian Airlines.
6. Capt. A.M. Kapoor, Director, Operations, Indian Airlines.
7. Shri D. Sen, Director, CBI.

Case : Shri Sanjay Gandhi's visit to Agra (U.P.)

1. Shri N.D. Tiwari, Chief Minister, U.P.
2. Shri K. Kishore, Commissioner, Agra Division.
3. Shri N.P. Agarwal, Executive Engineer, Development Authority, Agra.

Case : Alleged improprieties committed by the PM's House in regard to Shri Mangal Bihari, IAS of Rajasthan cadre and termination of services of Smt. Chandravati Sharma, Assistant Teacher.

1. Shri R.K. Dhawan, Addl. Private Secretary to the Prime Minister.
2. Shri Hira Lal Devpura, Minister for Power, Govt. of Rajasthan.
3. Shri Mohan Chhangani, Minister for Transport, Government of Rajasthan.
4. Shri Rajendra Jain, Secretary, Rajasthan State Electricity Board.
5. Shri Damodar Maurya, General Secretary, Prantiya Vidyut Mazdoor Federation, Jaipur.
6. Smt. Chandravati Sharma, Assistant Teacher, Government Girls Higher Secondary School.
7. Shri Mangal Bihari, Chairman, Rajasthan State Electricity Board.
8. Shri Mohan Mukherjee, Chief Secretary, Rajasthan.
9. Shri S.L. Khurana, Home Secretary, Government of India.
10. Shri Harideo Joshi, Chief Minister, Rajasthan.
11. Shri P.N. Behl, Joint Secretary in PM's Sectt., New Delhi.
12. Shri M.M.K. Wali, Chairman, Rajasthan State Electricity Board.

Case : Detention of Smt. Gayatri Devi, MP and Lt. Col. Bhawani Singh under COFEPOSA

1. Shri A.M. Sinha, Deputy Director of Enforcement, Ministry of Finance, New Delhi.
2. Shri S.B. Jain, Director of Enforcement, Ministry of Finance.
3. Shri G.S. Sawhny, Director General of Revenue Intelligence and Investigation, Ministry of Finance.
4. Shri C.T.A. Pillai, Joint Secy. Ministry of Finance, Department of Revenue.
5. Shri S. Mehta, Collector of Customs and Gold Control Administrator, Govt. of India.
6. Smt. Gayatri Devi, MP.
7. Smt. Vijaya Raje Scindia, MP.

Case : Vishwa Yuvak Kendra—Requisition of.

1. Shri P.T. Kuriakose, Director, Vishwa Yuvak Kendra.
2. Shri Ram Krishna Bajaj, Managing Trustee, Board of Trustees, Vishwa Yuvak Kendra.
3. Shri Sushil Kumar, Deputy Commissioner, Delhi.
4. Prof. V.V. John, Trustee of Vishwa Yuvak Kendra.
5. Shri J.K. Kohli, Chief Secretary, Delhi Administration.
6. Shri Krishan Chand, Lt. Governor, Delhi.
7. Shri Naval H. Tata, Trustee of Vishwa Yuvak Kendra.
8. Shri V.C. Shukla, Minister for Information and Broadcasting, Government of India.
9. Shri S.P. Godrej, Trustee, Vishwa Yuvak Kendra.
10. Shri Shashi Bhushan, Member of Parliament.

Case : Appointment of Shri U.S. Shrivastava as Chairman, Delhi Transport Corporation.

1. Shri U.S. Shrivastava, Chairman, Delhi Transport Corporation.
2. Shri Krishan Chand, Lt. Governor, Delhi.

Case : Harassment of Association of Voluntary Agencies for Rural Development.

1. Shri Shashi Bhushan, Member of Parliament.
2. Shri Harihar Lal, Director of Inspection (Investigation), Income Tax, Delhi.
3. Shri S.N. Shiende, Deputy Director of Inspection (Intelligence), Income Tax, Delhi.
4. Shri Om Mehta, Minister of State for Home Affairs, Government of India.

Case : Search and Seizure operations by Income Tax Department in the case of M/s. Bajaj Group

1. Shri Rahul Bajaj.
2. Shri Ram Krishna Bajaj.
3. Shri R.R. Gupta, Assistant Director of Inspection (Intelligence) Income Tax.
4. Shri Rangabhashyam, Assistant Director of Inspection (Intelligence) Income Tax.
5. Shri V. Mathur, Assistant Director of Inspection (Intelligence) Income Tax.
6. Shri S. Talwan, Assistant Director of Inspection (Intelligence) Income Tax.
7. Shri Viren J. Shah.
8. Shri S.R. Mehta, Chairman, Central Board of Direct Taxes.
9. Shri Harihar Lal, Director of Inspection (Investigation) Income Tax, New Delhi.
10. Shri S.N. Shinde, Deputy Director of Inspection (Intelligence) Income Tax, New Delhi.
11. Shri V.S. Wahi, Assistant Director of Inspection (Intelligence), Income Tax, New Delhi.

Case : Facilities provided by Punjab National Bank to M/s. KRSMA Chemicals Ltd.

1. Shri Virendra Kumar, P.A. to Minister of Revenue and Banking, Govt. of India.
2. Shri K.N. Vali, Officer, Punjab National Bank.
3. Shri D.P. Nayar, Officer, Punjab National Bank.
4. Shri T.R. Tuli, Chairman, Punjab National Bank.

Case : Special instructions issued by Income Tax Department in case of Maruti Ltd.

1. Shri Harihar Lal, Director of Inspection (Investigation) Income Tax, Delhi.
2. Shri S.R. Mehta, Chairman, Central Board of Direct Taxes.
3. Shri M.C. Abrol, Chairman, Central Board of Excise and Customs.
4. Shri M.M. N. Sharma, P.A. to Prime Minister.
5. Shri S. Narain, Member (Investigation) Board of Direct Taxes.
6. Shri K. Singh, Deputy Director of Inspection (Investigation) Income Tax.

Case : Concession by Punjab National Bank in favour of Maruti Limited

1. Shri T.R. Tuli, Chairman, Punjab National Bank.

Case : Clean Overdraft by Punjab National Bank in favour of Associated Journals Limited.

1. Shri T.R. Tuli, Chairman, Punjab National Bank.
2. Shri P.C. Sethi, Minister for Chemicals and fertilizer, Government of India.
3. Shri L.D. Sharma, Punjab National Bank.
4. Shri Harish C. Nakra, Punjab National Bank.
5. Shri D.C. Kalia, Punjab National Bank.
6. Shri L.B. Adalakha, Punjab National Bank.

Case : Detention of Shri Bhim Sen Sachar and seven others

1. Shri Sewak Ram, Chairman, Servants of Peoples' Society, Delhi Branch.
2. Shri Krishan Chand, Lt. Governor, Delhi.
3. Shri K. K. Sinha, Advocate, Supreme Court.
4. Shri P. S. Bhinder, Dy. I. G. of Police (Range) Delhi.
5. Shri K. S. Bajwa, Supdt. of Police, CID (SB) Delhi.
6. Shri Sushil Kumar, District Magistrate, Delhi.
7. Shri J. K. Sharma, Head of the Philosophy Department, Hans Raj College, Delhi University.
8. Shri P. Ghosh, Addl. District Magistrate (South), Delhi.
9. Shri Rajinder Mohan, Supdt. of Police (South), Delhi.
10. Smt. Meenakshi Dutta Ghosh, Addl. District Magistrate (New Delhi), Delhi.
11. Shri S. L. Arora, Addl. District Magistrate (North) Delhi.
12. Shri Ashok Pradhan, Addl. District Magistrate (Central) Delhi.
13. Shri Bhardwaj, Servants of Peoples' Society, Delhi.
14. Shri R. K. Dhawan, Addl. Private Secretary to the Prime Minister.
15. Shri Prakash Singh, Supdt. of Police (North), Delhi.
16. Shri R. K. Ohri, Supdt. of Police (Central), Delhi.
17. Shri M. N. Sharma, Personal Assistant to the Prime Minister.

Case : Circumstances leading to the declaration of Emergency—arrests and detentions

1. Shri J. R. Anand, Traffic, Manager, Delhi Transport Corporation.
2. Shri U. S. Srivastava, Director, Delhi Transport Authority.
3. Shri Navin Chawla, Secretary to Lt. Governor, Delhi.
4. Shri Krishan Chand, Lt. Governor, Delhi.
5. Shri B. K. Mittal, Assistant Secretary, Education, Delhi.
6. Shri S. P. Goel, Assistant Engineer, NDMC.
7. Shri Kishan Lal Chaudhury, Garden Chaudhary, NDMC.
8. Shri K. D. Nayyar, Supdt. of Police, New Delhi.
9. Shri Dhani Ram, Heavy Vehicle Driver and President D.M.S. Employees Union, Delhi.
10. Shri S. N. Shrivastava, Chief Labour Welfare Officer, DESU.
11. Shri K. P. Saksena, Controller (B) 15 M.W. Rajghat Power House, Delhi.
12. Shri R. S. Talwar, Chief Secretary, Government of Punjab.
13. Shri Raj Roop Singh, SHO, New Industrial Township, Faridabad.
14. Shri N. K. Garg, Dy. Commissioner, Rohtak.
15. Shri S. H. Mohan, Senior Supdt. of Police, Rohtak.
16. Shri M. K. Miglani, Dy. Commissioner, Gurgaon.
17. Sqn. Ldr. O. D. Sharma, Indian Air Force.
18. Shri S. C. Bhatt, Director, News Services, All India Radio.
19. Shri S. K. Roy, Deputy Director General, (M.S.) P & T Directorate, New Delhi.
20. Shri S. K. Misra, Secretary to the Chief Minister of Haryana.
21. Shri K. Balachandran, Secretary to the President of India.
22. Shri J. K. Kohli, Chief Secretary, Delhi.
23. Shri S. Neelakantan, Dy. Secretary to the President of India.
24. Shri A. Jayaram, Director, Intelligence Bureau.
25. Shri B. D. Pandey, Cabinet Secretary, Govt. of India.
26. Shri S. L. Khurana, Home Secretary, Govt. of India.
27. Shri P. N. Behl, Joint Secy. in the PM's Sectt.
28. Shri S. Lakshman, Correspondent, Press Trust of India.
29. Shri N. P. Mathur, Chief Commissioner, Chandigarh.
30. Shri M. G. Devshayam, Dy. Commissioner, Chandigarh.
31. Shri S. S. Bajwa, Inspector General of Police, Haryana.
32. Shri K. S. Bajwa, Supdt. of Police, CID S.B. Delhi.
33. Air Chief Marshal O. P. Mehra, Chief of the Air Staff.
34. Shri G. V. Gupta, Home Secretary, Government of Haryana.
35. Shri A. M. Abdul Hameed, Press Secretary to the President of India.
36. Shri Inder Kumar Gujaral, Minister of State for Information & Broadcasting, Govt. of India.
37. Shri Sushil Kumar, District Magistrate, Delhi.
38. Shri M. L. Bhanot, Senior Supdt. of Police, Chandigarh.
39. Shri H. R. Gokhale, Minister for Law, Justice and Company Affairs, Government of India.
40. Shri P. Ghosh, Addl. District Magistrate, (South Delhi).

41. Shri Jagjiwan Ram, Minister for Agriculture, Government of India.
42. Shri Bhawani Mal, Inspector General of Police, Delhi.
43. Shri Ashok Pradhan, Addl. District Magistrate, (Central) Delhi.
44. Shri G. V. K. Rao, Chief Secretary, Karnataka.
45. Shri S. C. Verma, Chief Secretary, Madhya Pradesh.
46. Shri S. D. Bhambri, Chief Secy., Haryana.
47. Shri R. K. Ohri, Supdt. of Police (Central) Delhi.
48. Shri Avinash Chandra, DIG of Police, CID Haryana.
49. Shri Akhtar Alam, Special Assistant to the President of India.
50. Shri Banar Singh, Addl. Dy. I.G. of Police, CID Haryana.
51. Shri H. M. Joshi, Inspector General of Police, Madhya Pradesh.
52. Wing Cdr. P. K. Mani, Indian Air Force.
53. Flt. Lt. V. K. Khandelwal, Indian Air Force.
54. Shri Harideo Joshi, Chief Minister, Rajasthan.
55. Shri J. Vengal Rao, Chief Minister, Andhra Pradesh.
56. Shri K. Brahmanand Reddy, Home Minister, Government of India.
57. Shri Om Mehta, Minister of State in the Home Ministry, Govt. of India.
58. Shri P. C. Sethi, Chief Minister, Madhya Pradesh.
59. Shri Siddhartha S. Ray, Chief Minister, West Bengal.
60. Shri T. A. Pai, Minister for Industries, Govt. of India.
61. Shri Dev Raj Urs, Chief Minister, Karnataka.
62. Shri M. L. Chandrasekhar, Commissioner of Police, Bangalore.

Case : Demolition in General

1. Shri Bhawani Mal, Inspector General of Police, Delhi.
2. Shri Ashok Pradhan, Addl. District Magistrate (Central) Delhi.
3. Shri Krishan Chand, Lt. Governor, Delhi.
4. Shri Nikhil Kumar, Supdt. of Police (Traffic), Delhi.
5. Shri S. C. Chhabra, Ex. President, New Delhi Municipal Committee.
6. Shri Navin Chawla, Secy. to the Lt. Governor, Delhi.
7. Shri K. Raghuramiah, Minister for Works and Housing, Government of India.
8. Shri Kasturi Lal Anand.
9. Shri Subhash Chandra Chadha.
10. Shri Syed S. Shafi, Addl. Chief Town Planner, Delhi.
11. Shri Sri Ram.
12. Shri R. K. Ohri, Supdt. of Police (Central) Delhi.
13. Shri B. S. Das, Member, International Airport Authority, Delhi.
14. Shri Jagmohan, Vice Chairman, Delhi Development Authority.
15. Shri B. R. Tamta, Municipal Commissioner, Delhi.
16. Shri R. M. Vatsa, Commissioner (L & M) Delhi Development Authority, Delhi.
17. Shri Inder Mohan.
18. Shri P. S. Batra.

Case : Demolition in Village Kapashera

1. Shri Rati Ram.
2. Shri Mool Chand
3. Shri Hardwari Lal
4. Shri Nawal Singh
5. Shri Jagdish Prasad
6. Shri Ganga Duft
7. Shri Pyare Lal.
8. Shri S. P. Gupta
9. Shri Ranbir Singh, Executive Officer, Delhi Development Authority.
10. Shri M. S. Yadav.
11. Shri Ram Kishan.
12. Shri Jagmohan, Vice Chairman, Delhi Development Authority.
13. Col. Ram Singh Yadav.
14. Shri Satya Prakash, Executive Officer, Delhi Development Authority.
15. Smt. Agya Rajinder Singh, Executive Officer, Delhi Development Authority.
16. Shri O. P. Bhutani.

17. Shri O. P. Gupta, Zonal Assistant Commissioner, Municipal Corporation of Delhi.
18. Shri P. N. Vinayak, Assistant Engineer, Municipal Corporation of Delhi.
19. Shri B. R. Tamta, Municipal Commissioner, Delhi.
20. Shri S. S. Manu, Zonal Assistant Commissioner, Municipal Corporation of Delhi.
21. Shri C. M. Vij, Executive Engineer, Municipal Corporation of Delhi.
22. Shri Kewal Mullick, Dy. Supdt. of Police, Demolition Squad, Delhi Development Authority.
23. Shri Sanjay Gandhi.
24. Shri Jog Russel, Executive Officer, Delhi Development Authority.
25. Shri Satbir Singh, Tahsildar, Delhi Development Authority.

Case : Demolition in Village Samalkha

1. Shri Indradev Sharma.
2. Shri K. B. Gulati.
3. Shri Khajan Singh.
4. Shri Hari Singh Sharma.
5. Shri Thandi Ram.
6. Shri P. N. Vinayak, Assistant Engineer, Municipal Corporation of Delhi.
7. Shri Kanwar Lal.
8. Shri S. S. Mann, Zonal Assistant Commissioner, Municipal Corporation of Delhi.
9. Shri B. R. Tamta, Municipal Commissioner, Delhi.
10. Shri O. P. Gupta, Zonal Assistant Commissioner, Municipal Corporation of Delhi.

Case : Demolition in Bhulswa, Jahangirpuri and Sarai Peepalthala

1. Shri Ranbir Singh, Executive Officer, Delhi Development Authority.
2. Shri Phool Singh Sharma.
3. Shri Gokul Chandra Pradhan.
4. Shri Bhim Singh.
5. Shri O. P. Khanna.
6. Shri Satya Prakash, Executive Officer, Delhi Development Authority.
7. Shri Jagmohan, Vice Chairman, Delhi Development Authority.
8. Shri C. S. Jha, Implementation Officer, Delhi Development Authority.
9. Shri Mahabir Singh.
10. Shri G. C. Sharma, Executive Officer, Delhi Development Authority.
11. Shri Kewal Mullick, Dy. Supdt. of Police, Demolition Squad, Delhi Development Authority.

Case : Demolition of Arya Samaj Temple, Green Park, New Delhi

1. Shri Bal Ram Arya.
2. Shri S. M. Dua, Executive Officer, DDA.
3. Shri H. C. Sharma.
4. Shri Chander Bhan, Process Server, Delhi Development Authority.
5. Shri V. N. Verma, Section Officer, Delhi Development Authority.
6. Shri Jagmohan, Vice Chairman, Delhi Development Authority.
7. Shri Kewal Mallick, Dy. Supdt. of Police, Demolition Squad, Delhi Development Authority.

Case : Shifting of Cycle Market from Esplanade Road to Jhandewalan

1. Shri S. P. Raizada.
2. Shri S. R. Nijhawan, Home Building Society, Delhi.
3. Shri Yusuf Zai, Vice Chairman, Delhi Development Authority, (after Emergency).
4. Shri V. R. Gadoka.
5. Shri Jagmohan, Vice Chairman, Delhi Development Authority.

Case : Demolition in Walled City

1. Shri Jagmohan, Vice Chairman, Delhi Development Authority.
2. Smt. Subhadra Joshi, Member of Parliament.
3. Shri A. K. Paitandy, Sub Divisional Magistrate, Delhi.
4. Shri Ashok Pradhan, Addl. District Magistrate (Central) Delhi.
5. Shri D. C. Jain, Assistant Commissioner (Slum) Delhi Development Authority.
6. Shri Mohammed Islam.
7. Shri Siraj Piracha.
8. Shri Inder Mohan.

9. Shri Prem Sagar Gupta.
10. Shri Abdul Ahad.
11. Shri B. R. Tamta, Municipal Commissioner, Delhi.
12. Shri Kashmiri Lal, Tahsildar, Delhi Development Authority.
13. Shri R. S. Gupta, Engineer Member, Delhi Development Authority.
14. Shri S. K. Gupta, Assistant Director incharge of Documents Division, Central Forensic Science Laboratory, New Delhi.
15. Shri Maksud Ahmed.

Case : Demolition in Turkman Gate Area

1. Shri K. Raghuramiah, Minister for Works and Housing, New Delhi (Government of India).
2. Shri Kayamuddin.
3. Shri Zahiruddin.
4. Shri Ramjani.
5. Smt. Zamila Begum.
6. Shri Ibrahim.
7. Shri Islamuddin.
8. Shrimati Anaro.
9. Shri Jemaluddin.
10. Shri Jahanuddin.
11. Shri Bashir Ahmed.
12. Shri H. H. M. Yunus.
13. Shri Rajesh Sharma, Member Metropolitan Council, Delhi.
14. Shri Bashiruddin Shafi
15. Smt. Subhadra Joshi, Member of Parliament, Delhi.
16. Shri C. S. Gupta, Chief Town Planner, Town and Country Planning Organisation, New Delhi.
17. Shri S. Shafi, Addl. Chief Town Planner, Town and Country Planning Organisation, New Delhi.
18. Shri S. K. Gupta, Assistant Director incharge of documents division, Central Forensic Science Laboratory.
19. Shri Kashmiri Lal, Tahsildar, Delhi Development Authority.
20. Shri H. K. Lal, Deputy Commissioner (Slum), Delhi Development Authority.
21. Shri R. S. Gupta, Engineer Member, Delhi Development Authority.
22. Shri D. C. Jain, Assistant Commissioner, (Slum) Delhi Development Authority.
23. Shri P. S. Bhinder, Dy. I.G. of Police (Range), Delhi.
24. Shri Jagmohan, Vice Chairman, Delhi Development Authority.
25. Shri I. J. Verma, D.I.G. of Police, Delhi
26. Shri Ashok Pradhan, Addl. District Magistrate (Central), Delhi.
27. Shri Bhawani Mal, Inspector General of Police, Delhi.
28. Shri K. S. Bajwa, Supdt. of Police SB (CID), Delhi.
29. Shri Krishan Chand, Lt. Governor, Delhi.
30. Shri Navin Chawla, Secy. to Lt. Governor, Delhi.
31. Shri R. K. Ohri, Supdt. of Police (Central), Delhi.
32. Shri Sushil Kumar, District Magistrate, Delhi.
33. Shri H. D. Birdi, Assistant Commissioner (Slum), Delhi Development Authority.
34. Shri G. C. Srivastava, Dy. Commissioner (Slum), Delhi Development Authority.

Case : Pressurising Magistrates to sign back-dated warrants

1. Shri N. C. Ray, Sub Divisional Magistrate, Delhi.
2. Shri Sushil Kumar, District Magistrate, Delhi.
3. Shri A. K. Paitandi, Sub Divisional Magistrate, Delhi.
4. Shri Ashok Pradhan, Addl. District Magistrate (Central), Delhi.
5. Shri P. S. Bhinder, Dy. I.G. of Police (Range), Delhi.

Case : Turkman Gate firing

1. Shri Sushil Kumar, District Magistrate, Delhi.
2. Shri A. K. Paitandi, Sub Divisional Magistrate, Delhi.
3. Shri Ashok Pradhan, Addl. District Magistrate, Delhi.
4. Shri Bhawani Mal, Inspector General of Police, Delhi.
5. Shri Krishan Chand, Lt. Governor, Delhi.
6. Shri R. S. Gupta, Engineer Member, Delhi Development Authority.
7. Shri R. Tiwari, Supdt. of Police, Delhi Airport.
8. Shri Avinash Chandra, Sub Divisional Police Officer, Delhi.

9. Shri N. C. Ray, Sub Divisional Magistrate, Delhi.
10. Shri K. S. Bajwa, Supdt. of Police, CID, Special Branch, Delhi.
11. Shri Jugraj Chand, SHO Jama Masjid Police Station, Delhi.
12. Shri B. K. Mishra, Commandant, 1st Bn., Delhi Armed Police, Delhi.
13. Shri I. J. Verma, Dy. I.G. of Police, Delhi.
14. Shri Govind Ram Bhatia, Assistant Sub-Inspector, Delhi Police.
15. Shri G. S. Mander, Dy. I.G. of Police, Delhi.
16. Shri S. K. Kain, Assistant Inspector General of Police, Delhi.
17. Dr. G. R. Prasad, Assistant Director, Central Forensic Science Laboratory, Delhi.
18. Shri H. D. Birdi, Assistant Commissioner (Slum), Delhi Development Authority.
19. Shri Rajesh Sharma, Executive Councillor, Delhi.
20. Shri D. C. Jain, Assistant Commissioner (Slum), Delhi.
21. Shri Garib Ram, Inspector, Delhi Police.
22. Smt. Allah Rakhi.
23. Shri Ibrahim.
24. Smt. Fatima.
25. Shri Bashir Ahmed.
26. Shri Navin Chawla, Secy. to Lt. Governor, Delhi.
27. Shri Jamaluddin.
28. Shri H.H.M. Yunus.
29. Shri Zahiruddin.
30. Shri Bashiruddin.
31. Dr. Bishnu Kumar, Head of Department, Forensic Medicine, Maulana Azad Medical College, Delhi.
32. Smt. Subhadra Joshi, Member of Parliament, Delhi.
33. Shri H. K. Lal, Dy. Commissioner (Slum), Delhi Development Authority.
34. Shri K. D. Nayyar, Supdt. of Police, Delhi.
35. Shri Kewal Mallick, Dy. Supdt. of Police, Demolition Squad, Delhi Development Authority.
36. Shri R. K. Ohri, Supdt. of Police (Central), Delhi.
37. Shri Attar Singh, Constable Police Station Lahori Gate, Delhi.
38. Shri Siraj Piracha.
39. Shri Ravibhan Singh, Constable, Police Station, Turkman Gate, Delhi.
40. Shri Mata Din, Constable, 22nd Bn., Central Reserve Police Force.
41. Shri Mahatab Singh, Commandant, 21st Bn., Central Reserve Police Force.
42. Shri P. R. Chaube, Sub-Inspector, Central Reserve Police Force.
43. Shri Bhanwar Singh Shakhawat, Platoon Commander I.C. 21st Bn., Central Reserve Police Force.
44. Shri Ram Bhawan Sharma, Naik, 21st Bn., Central Reserve Police Force.
45. Shri Baikunt Pandey, Constable, 21st Bn., Central Reserve Police Force.
46. Shri Nagendra Kumar, Constable 21st Bn., CRPF.
47. Shri B. D. Joshi.
48. Shri Bhoom Singh, Constable, 21st Bn., Central Reserve Police Force.
49. Shri P. S. Bhinder, Dy. I.G. of Police, Delhi.
50. Shri R. K. Sharma, Dy. Supdt. of Police, Delhi.
51. Smt. Sahlan Khatoon.
52. Shri Jagmohan, Vice Chairman, Delhi Development Authority.
53. Smt. Anaro.
54. Shri A. K. Singh, Supdt. of Police, Delhi.
55. Shri C. S. Gupte, Chief Town Planner, Town and Country Planning Organisation, Delhi.
56. Shri S. Shaif, Addl. Chief Town Planner, Town and Country Planning Organisation, Delhi.
57. Shri Jahauddin.
58. Shri Ramzani.
59. Smt. Zamila Begum.
60. Shri Islamuddin.
61. Shri M. S. Bawa, Dy. Director (Operation), Central Reserve Police Force.
62. Kum. Aditi Gupta.

Case : Demolition in Arjun Nagar

1. Lt. Col. Naresh Chander.
2. Shri Mahant Atmaram.
3. Shri Satya Prakash, Executive Officer, Delhi Development Authority.
4. Shri Satya Prakash Tyagi, Sub-Inspector of Police, Delhi.
5. Shri C. R. Sharma.

6. Shri R. C. Joshi.
7. Shri P. D. Sharma.
8. Shri Krishan Chand, Lt. Governor, Delhi.
9. Shri R. S. Khatri.
10. Shri Ranbir Singh, Executive Officer, Delhi Development Authority.
11. Shri Jagmohan, Vice Chairman, Delhi Development Authority.
12. Shri S. R. Saxena, Executive Officer, Delhi Development Authority.
13. Shri Hargovind Malik, Inspector of Police, Delhi.
14. Shri Trilochan Singh.
15. Shri Kanshi Ram.
16. Shri Rajendra Mohan, Supdt. of Police, Delhi.
17. Shri R. S. Gupta, Supdt. of Police, Delhi.
18. Shri B. M. L. Gaumat, Land Acquisition Collector, Delhi.
19. Shri H. N. Sharma, Land Acquisition Collector, Delhi.
20. Shri Kewal Mullick, Dy. S.P., Demolition Squad, Delhi Development Authority.
21. Shri Sehdev Singh, Delhi Development Authority, Delhi.

Case : Demolition in Bhagat Singh Market

1. Shri Balbir Singh.
2. Shri Kundan Singh.
3. Shri S. P. Dua.
4. Shri K. S. Bhatti.
5. Shri Satpal Chadha.
6. Shri V. S. Ailawadi, Member Secretray, New Delhi Municipal Committee.
7. Shri A. P. Gupta, Assistant Engineer, New Delhi Municipal Committee.
8. Shri S. P. Goel, Assistant Engineer, New Delhi Municipal Committee.
9. Shri C. S. Asnani, Jr. Engineer, New Delhi Municipal Committee.
10. Shri B. S. Sehgal, Dy. Secretary, New Delhi Municipal Committee.
11. Shri V. P. Chetal, Chief Engineer, New Delhi Municipal Committee.
12. Smt. Vidya Ben Shah, President, New Delhi Municipal Committee.

Case : Demolition in Sultanpur Mazra

1. Shri K. C. Sharma.
2. Shri Yashpal Mehta.
3. Smt. Sharda Ben Arvindlal Shah.
4. Shri Ranbir Singh, Executive Officer, Delhi Development Authority.
5. Shri Jagmohan, Vice Chairman, Delhi Development Authority.
6. Shri Bharat Singh, Member of Metropolitan Council, Delhi.

Case : Demolition in Andheria Mor

1. Shri Kunwar Sen Sharma.
2. Shri Jasbir Singh.
3. Shri Arjan Singh.
4. Shri Jagdish Chander.
5. Shri Gordhan Das.
6. Shri B. R. Tamta, Municipal Commissioner, Delhi.
7. Shri O. P. Gupta, Zonal Assistant Commissioner, Municipal Corporation of Delhi.
8. Shri P. N. Vinayak, Assistant Engineer, Municipal Corporation of Delhi.
9. Shri V. P. Gupta, Zonal Engineer, Municipal Corporation of Delhi.

Case : Demolition in Karol Bagh Area

1. Shri K. L. Anand.
2. Shri P. S. Batra.
3. Shri S. C. Chadha.
4. Shri Sri Ram.
5. Shri B. R. Tamta, Municipal Commissioner, Municipal Corporation, Delhi.
6. Shri Ram Singh, Zonal Assistant Commissioner, Municipal Corporation of Delhi.
7. Shri D. C. Mishra, Dy. Commissioner, Municipal Corporation of Delhi.
8. Shri S. S. Man, Zonal Assistant Commissioner, Municipal Corporation of Delhi.

Case : Sales Tax and price tags raids on the shops of M/s. Pandit Bros.

1. Shri A.S. Awasthi, Assistant Commissioner, Sales Tax, Delhi.
2. Shri Ashok Kapur, Officer on Special Duty (Central Enforcement), Delhi Admn.
3. Shri B. Chakravarti, Assistant Sales Tax Officer, Delhi.
4. Shri J.C. Luther, Commissioner, Income Tax, Delhi.
5. Shri Jagdish Singh, Inspector, Delhi Police.
6. Shri K.P. Mushran, Partner, M/s. Pandit Bros., New Delhi.
7. Shri Krishan Chand, Lt. Governor, Delhi.
8. Shri Kuldip Singh, Sales Tax Officer, Delhi.
9. Shri L.S. Mathur, Manager, M/s. Pt. Brothers, Delhi.
10. Shri Navin Chawla, Secy. to Lt. Governor, Delhi.
11. Shri Nathoo Singh, Sales Tax Officer, Delhi.
12. Shri P.S. Bhinder, Dy. I.G. of Police (Range), Delhi.
13. Shri R.K. Khanna, Manager, M/s. Pandit Brothers, Delhi.
14. Shri Ram Murti Sharma, Dy. Supdt. of Police, Delhi.
15. Shri R.N. Haksar, Partner, M/s. Pandit Bros., Delhi.
16. Shri R.K. Dhawan, Addl. Private Secy. to the Prime Minister.
17. Shri R.S. Jawa, Income Tax Officer.
18. Shri S.K. Mathur, Asstt. Sales Tax Officer, Delhi.
19. Shri S.D. Tiwari, Sales Tax Inspector, Delhi.
20. Shri Sat Prakash, Sub-Inspector, Delhi Police.
21. Shri S.L. Arora, Addl. District Magistrate, Delhi.
22. Shri V.K. Tyagi, Director of Information, Delhi Administration.
23. Shri Virendra Prakash, Commissioner, Sales Tax, Delhi.
24. Shri S.P. Suri, Asstt. Sales Tax Officer, Delhi.

Case : Import of Aircraft by Shri Dharendra Brahamachari,

1. Shri A.M. Sinha, Deputy Director of Enforcement, New Delhi.
2. Shri A.P. Nandy, Chief Enforcement Officer, New Delhi.
3. Shri A. Banerji, Income Tax Officer, Central Circle, New Delhi.
4. Prof. D.P. Chattopadhyaya, Minister for Commerce, Government of India.
5. Shri G.S. Majni, Deputy Director of Enforcement, New Delhi.
6. Shri H.N. Ray, Finance Secy., Government of India.
7. Shri N.K. Singh, Special Assistant to Commerce Minister.
8. Shri N.C. Rastogi, Joint-Chief-Controller of Imports and Exports, New Delhi.
9. Shri P.K. Kaul, Chief Controller of Imports and Exports, Govt. of India.
10. Shri R.K. Dhawan, Addl. Private Secretary to the Prime Minister.
11. Shri R.S. Seth, Enforcement Officer, New Delhi.
12. Shri S.P. Jain, Director of Enforcement, Government of India.
13. Shri S.K. Bose, Deputy Director (Planning), DGCA, New Delhi.
14. Shri S. Ramamritham, Director General of Air Aviation.
15. Shri V.K. Gupta, Dy. Secretary, Ministry of Finance, (Deptt. of Revenue), Govt. of India.
16. Shri V.N. Kapur, Director of Aeronautical Inspection DGCA, New Delhi.
17. Shri V.P. Laxmi Narayanan, Joint Director, CBI, New Delhi.

Case : Landing Facilities for Shri Dharendra Brahamachari's Imported Aircraft at Mantalaj in J&K State and use of Aircraft.

1. Shri D.N. Bhardwaj, Director, Air Routes and Aerodromes (Planning), DGCA.
2. Air Marshal H. Moolgaonkar, Chief of the Air Staff.
3. Shri G.R. Kathpalia, Dy. Director General, Civil Aviation.
4. Shri K. Narasimhan, Member (Traffic), Central Board of Excise and Customs.
5. Shri M.A. Rangaswami, Member (Customs), Central Board of Excise and Customs.
6. Shri S.K. Mishra, Jt. Secretary, Ministry of Defence, Govt. of India.
7. Air Commodore P.P. Singh, Director, Intelligence, Indian Air Force.
8. Shri Vinay Vyas, Jt. Secretary, Ministry of Defence, Government of India.

Case : Detention of Shri Karunesh Shukla S/o Shri Krishan Deo Shukla.

1. Shri Ashok Pradhan, Addl. District Magistrate (Central), Delhi.
2. Shri B.K. Goswami, District Magistrate, Delhi.
3. Shri Virendra Singh, ADM (South), Delhi.
4. Shri K.S. Bajwa, Supdt. of Police (CID), SB, Delhi.
5. Shri Krishan Chand, Lt. Governor, Delhi.

Case : Arrests and Detentions in Delhi during emergency—issue of Detention Orders under MISA.

1. Shri Sushil Kumar, District Magistrate, Delhi.
2. Shri G. C. Shrivastava, Addl. District Magistrate (East), Delhi.
3. Shri Ashok Pradhan, Addl. District Magistrate (Central), Delhi.
4. Shri S. L. Arora, Addl. District Magistrate (North), Delhi.
5. Shri Virender Singh, Addl. District Magistrate (South), Delhi.
6. Shri R. K. Ohri, Supdt. of Police (Central), Delhi.
7. Shri K. D. Nayyar, Supdt. of Police (New Delhi), Delhi.
8. Shri Rajendra Mohan, Supdt. of Police (South), Delhi.
9. Shri R. S. Sahaye, Supdt. of Police (North), Delhi.
10. Shri K. S. Bajwa, Supdt. of Police, CID (SB), Delhi.
11. Shri Navin Chawla, Secy. to the Lt. Governor, Delhi.
12. Shri Krishan Chand, Lt. Governor, Delhi.
13. Shri P. S. Bhinder, Dy. I.G. of Police (Range), Delhi.
14. Shri Bhawanimal, Inspector General of Police, Delhi.

Case : Arrests and detention in Delhi during Emergency Confirmation of Detention Order by Lt. Governor—Four-monthly Statutory Review and Working of the Administrative Review Committee

1. Shri T. R. Kalia, Dy. Secy. (Home), Delhi Administration, Delhi.
2. Shri A. D. Sapra, Dy. Secy. (Home), Delhi Administration, Delhi.
3. Shri O. P. Shama, Under Secretary (Law), Delhi Administration, Delhi.
4. Shri Jagmohan, Dy. Secretary to the Lt. Governor, Delhi.
5. Smt. Shailaja Chandra, Special Secretary (Home), Delhi Administration, Delhi.
6. Shri J. K. Kohli, Chief Secretary, Delhi Administration, Delhi.
7. Shri B. K. Goswami, District Magistrate, Delhi.
8. Shri Vijay Karan, Deputy Director, Intelligence Bureau, New Delhi.
9. Shri K. S. Bajwa, Supdt. of Police (CID), SB, Delhi.
10. Shri Navin Chawla, Secy. to the Lt. Governor, Delhi.
11. Shri S. L. Jain, Under Secy. (Home), Delhi Administration, Delhi.
12. Shri Krishan Chand, Lt. Governor, Delhi.

Case : Detention of Shri Vaid Guru Datt.

1. Shri Vaid Guru Datt, Novelist.
2. Shri Jarnail Singh, Inspector of Police, P.S. Punjabi Bagh, Delhi.
3. Shri A. K. Paitandi, Sub-Divisional Magistrate, Delhi.
4. Shri R. K. Ohri, Supdt. of Police (Central), Delhi.
5. Shri B. K. Goswami, District Magistrate, Delhi.
6. Shri S. L. Arora, Addl. District Magistrate (North), Delhi.
7. Shri Jagmohan, Deputy Secy. to Lt. Governor, Delhi.
8. Shri K. S. Bajwa, Supdt. of Police (CID), SB, Delhi.
9. Shri Krishan Chand, Lt. Governor, Delhi.
10. Smt. Shailaja Chandra, Special Secretary (Home), Delhi Administration, Delhi.

Case : Detention of Shri Mamchand S/o Shri Malkhan.

1. Shri Mamchand
2. Shri K. D. Nayyar, Supdt. of Police (New Delhi), Delhi.
3. Shri A. D. Sapra, Dy. Secy. (Home), Delhi Admn., Delhi.
4. Shri Krishan Chand, Lt. Governor, Delhi.
5. Shri J. K. Kohli, Chief Secretary, Delhi Admn., Delhi.
6. Shri P. S. Bhinder, Dy. I.G. of Police (Range), Delhi.

Case : Arrests and Detention in Delhi during Emergency—Parole.

1. Shri J. K. Kohli, Chief Secy., Delhi Admn., Delhi.
2. Smt. Shailaja Chandra, Special Secretary (Home), Delhi Administration, Delhi.
3. Shri Krishan Chand, Lt. Governor, Delhi.
4. Shri Navin Chawla, Secy. to the Lt. Governor, Delhi.

Case : Arrests and Detentions in Delhi during Emergency—Use of MISA against ordinary criminals.

1. Shri Krishan Chand, Lt. Governor, Delhi.
2. Shri S. L. Arora, Addl. District Magistrate (North), Delhi.
3. Shri R. S. Sahaye, Supdt. of Police (North), Delhi.

Case : Arrests and Detentions in Delhi during Emergency—Use of MISA against violators of display of Prices of Articles Order, 1975.

1. Shri K. L. Jaggi.
2. Shri Krishan Chand, Lt. Governor, Delhi.
3. Shri P. Ghosh, Addl. District, Magistrate (South), Delhi.

Case : Detention of Shri Virender Kapoor S/o Shri K. N. Kapoor.

1. Shri V. N. Kapoor, Journalist.
2. Smt. Coomi Kapoor, Journalist.
3. Shri Sardar Singh, SHO, P.S. Kotwali, Delhi.
4. Shri Prakash Singh, Supdt. of Police (North), Delhi.
5. Shri Sushil Kumar, District Magistrate, Delhi.
6. Smt. Shailaja Chandra, Special Secy. (Home), Delhi Administration, Delhi.
7. Shri Navin Chawla, Secy. to the Lt. Governor, Delhi.
8. Shri K. S. Bajwa, Supdt. of Police, CID (SB), Delhi.
9. Shri Krishan Chand, Lt. Governor, Delhi.
10. Shri P. S. Bhinder, Dy. I.G. of Police (Range), Delhi.
11. Shri P. Ghosh, Addl. District Magistrate (South), Delhi.

Case : Arrests and Detentions in Delhi during Emergency—Treatment in Jail.

1. Shri R. N. Sharma, Supdt. Central Jail, New Delhi.
2. Shri S. K. Batra, Supdt. Central Jail, New Delhi.
3. Shri Navin Chawla, Secy. to the Lt. Governor, Delhi.
4. Shri Krishan Chand, Lt. Governor, Delhi.

Case : Arrests and Detentions in Delhi during Emergency—Arrest of Shri Pravir Purkayastha.

1. Shri Pravir Purkayastha.
2. Km. Shakti Kak.
3. Shri T. R. Anand, Sub Divisional Police Officer, New Delhi.
4. Shri Rajendra Mohan, Supdt. of Police (South), Delhi.
5. Shri P. Ghosh, Addl. District Magistrate (South), Delhi.
6. Shri Sushil Kumar, District Magistrate, Delhi.
7. Shri Krishan Chand, Lt. Governor, Delhi.
8. Shri P. S. Bhinder, Dy. I.G. of Police (Range), Delhi.
9. Km. Indrani Mazumdar.

Case : Arrests and Detentions in Delhi during Emergency—Attitude of Delhi. Admn. towards MHA.

1. Shri Sushil Kumar, District Magistrate, Delhi.
2. Shri J. K. Kohli, Chief Secy., Delhi Administration, Delhi.
3. Shri Jag Mohan, Deputy Secy. to the Lt. Governor, Delhi.
4. Shri S. K. Batra, Supdt. Central Jail, New Delhi.
5. Smt. Shailaja Chandra, Special Secretary (Home), Delhi Administration, Delhi.
6. Shri Navin Chawla, Secy. to the Lt. Governor, Delhi.
7. Shri Krishan Chand, Lt. Governor, Delhi.

Case : Detention of Shri Kuldip Nayyar.

1. Shri Kuldip Nayyar, Journalist.
2. Shri K. S. Bajwa, Supdt. of Police, CID (SB), Delhi.
3. Shri P. Ghosh, Addl. District Magistrate, Delhi.
4. Shri Sushil Kumar, District Magistrate, Delhi.
5. Shri K. D. Nayyar, Supdt. of Police (New Delhi), Delhi.
6. Shri Krishan Chand, Lt. Governor, Delhi.

Case : Detention of Shri Inder Mohan of Delhi.

1. Shri Inder Mohan.
2. Shri R. K. Ohri, Supdt. of Police (Central), Delhi.
3. Shri Jug Raj Chand, Inspector of Police, Delhi.
4. Shri Man Phool Singh, Sub Inspector, Delhi.
5. Shri K. S. Bajwa, Supdt. of Police, CID (SB), Delhi.
6. Shri P. S. Bhinder, Dy. I.G. (Range), Delhi.

Case : Alleged wrongful confinement and torture of Shri Lawrence Fernandes by the Police and maltreatment in Jail.

1. Shri Lawrence Fernandes.
2. Shri Pattabi Rama Reddy.
3. Dr. T. Rajgopal, Assistant Surgeon, K. C. General Hospital, Bangalore.
4. Shri J. J. Fernandes.
5. Smt. Alico Fernandes.
6. Dr. P. M. Jayarappa, Assistant Surgeon, K. C. General Hospital, Bangalore.
7. Dr. Sadeshiva Reddy, Assistant Surgeon, Central Prison, Bangalore.
8. Dr. T. R. Nagaraj, Asstt. Professor of Orthopaedics, Victoria Hospital, Bangalore.
9. Dr. B. M. Narayan, Distt. Surgeon, Bangalore.
10. Dr. Krishnappa, Orthopaedics Surgeon, Victoria Hospital, Bangalore.
11. Dr. T. V. Mariyappa, Professor and Head of Department of Orthopaedics, Victoria Hospital, Bangalore.
12. Dr. S. Gyanchand, Head of Department of Orthopaedics Bowring and Lady Curzon Hospital, Bangalore.
13. Dr. C. K. Bangappa, Radiologist, Bowring Medical Hospital, Bangalore.
14. Shri T. Konark Manohar Rama Reddy.
15. Shri H. L. Chabalani, Sr. Supdt. Central Prison, Bangalore.
16. Shri B. R. Narayana Rao, Inspector of Police, Corps of Detectives, Bangalore.
17. Shri H. Veeraiah, Inspector of Police, Corps of Detectives, Bangalore.
18. Shri H. B. Shiva Swami, Inspector of Police, Corps of Detectives, Bangalore.
19. Shri G. R. Parmeshwarappa, Inspector of Police, Malleswram, Bangalore.
20. Shri G. S. Rana, Inspector of Police, Corps of Detectives, Bangalore.
21. Shri H. S. Vishwashwaraiah, Dy. Supdt. of Police, Corps of Detectives, Bangalore.
22. Shri G. N. Ramamurthy, Director, Printing and Stationery, Bangalore.
23. Shri K. Vittal Naik, Assistant Commissioner of Police, Law and Order, Bangalore.
24. Shri T. Srinivasulu, Dy. Commissioner of Police, Law and Order, Bangalore.
25. Shri M. V. Krishnamurthy Raju, S. P. Corps of Detectives, Bangalore.
26. Shri K. C. K. Raja, Addl. Secretary, Home Department, Government of Karnataka.
27. Shri K. Vikram Rao, Journalist.

Case : Treatment of Smt. Sneha Lata Reddy, a MISA detenu in Central Jail, Bangalore

1. Shri Pattabhirama Reddy.
2. Smt. Nandans.
3. Shri T. Konark Manohar Rama Reddy.
4. Dr. Sadeshiva Reddy, Assistant Surgeon, Central Prison, Bangalore.
5. Dr. B. M. Narayana, Distt. Surgeon, Bangalore.
6. Shri Malliah, Inspector General of Prisons, Bangalore.
7. Shri H. L. Chabalani, Sr. Supdt., Central Prison, Bangalore.

Case : Detention under MISA in Karnataka during Emergency

1. Shri R. Sankarappa, District Magistrate, Chickmagalur.
2. Shri B. S. Hanuman, Home Secy., Govt. of Karnataka.

Case : Detention of Shri Shakeel Raza S/o Shri Akbar Ali Sahib

1. Shri Shakeel Raza.
2. Shri M. L. Chandrasekhar, Commissioner of Police, Bangalore.

Case : Detention of Shri K. N. Raju S/o late Narayanan

1. Shri K. N. Raju.
2. Shri M. L. Chandrasekhar, Commissioner of Police, Bangalore.

Case : Detention of Shri M. Rama Jois S/o M. Narasimha Jois

1. Shri M. L. Chandrasekhar, Commissioner of Police, Bangalore.

Case : Detention of Shri Jayapal

Shri Sankarappa, District Magistrate, Chickmagalur.

1. Shri Sankarappa.

Case : Detention under MISA during emergency in Haryana and the neighbourhood

1. Shri K. K. Sharma, District Magistrate, Ambala.
2. Shri M. K. Sharma, Sub-Assistant Supdt., Hissar Jail.

Case : Detention under MISA of Shri Murlidhar Dalmia, Chief Adviser of the Technological Institute of Textiles, Bhiwani

1. Smt. Anar Devi Dalmia.
2. Shri D.P. Mandelia.
3. Shri K.K. Birla.
4. Shri K.M. Dabrial.
5. Shri Murlidhar Dalmia, Chief Adviser, Technological Institute of Textiles, Bhiwani.
6. Shri Parmanad, District Inspector, CID, Bhiwani.
7. Shri R.S. Verma, District Magistrate, Bhiwani.
8. Shri R.C.D. Kaushik, Principal, Technological Institute of Textiles, Bhiwani.
9. Shri Y.S. Nakai, Sr. Supdt. of Police, Bhiwani.
10. Shri Gulab Singh, Dy. District Attorney, Bhiwani.

Case : Detention of Shri M.L. Kak, Staff Correspondent 'Tribune' of Hissar

1. Shri Babu Lal, Asst. Sub-Inspector (Security), Hissar.
2. Shri Balbir Singh, Dy. Supdt. of Police (Hqrs), Hissar.
3. Shri Kalyan Rudra, Sr. Supdt. of Police, Hissar.
4. Shri L.M. Jain, Distt. Magistrate, Hissar.
5. Shri L.P. Sood, Dy. District Attorney, Hissar.
6. Smt. Meenakshi Anand Chaudhary, Dy. Secretary (Home), Haryana.
7. Shri M.L. Kak, Staff Correspondent, Tribune, Hissar.
8. Shri Pyare Lal, Public Prosecutor, Hissar.
9. Shri S.D. Bhambri, Chief Secretary, Haryana.
10. Smt. Shama Kak.
11. Shri S.S. Bajwa, Inspector General of Police, Haryana.

Case : Detention of Cdr. Pritam Dutta of Rohtak

1. Shri A.N. Mathur, Dy. Secy. (Home), Haryana.
2. Shri J.K. Duggal, Excise and Taxation Commissioner, Haryana.
3. Shri N.K. Garg, District Magistrate, Rohtak.
4. Shri M.C. Gupta, Home Secy., Haryana.
5. Shri O.P. Taneja, Dy. Excise and Taxation Commissioner, Haryana.
6. Cdr. Pritam Dutta.
7. Shri R.C. Mehtani, Officer on Special Duty to Chief Minister, Haryana.
8. Shri S.H. Mohan, Sr. Supdt. of Police, Rohtak.
9. Shri S.P. Mittal, District Magistrate, Rohtak.

Case : Family Planning case of Village Uttawar, District Gurgaon

1. Shri Abdul Rehman.
2. Shri Abdul Rehman@ Lala.
3. Shri Banarsi Das Gupta, Chief Minister, Haryana.
4. Shri Chahat.
5. Shri Haji Chhutmal.
6. Shri Gajraj Singh, Sub-Divisional Magistrate, Nuh.
7. Shri Jagbir Singh, Sub-Divisional Magistrate, Nuh.
8. Shri J.P. Tevatia, Line Supdt., H.S.E.B., Hathin.
9. Shri Khursheed Ahmed, General Secy., Haryana Pradesh Congress Committee.
10. Dr. K.B. Lal Chief Medical Officer, Gurgaon.
11. Shri Mauja.
12. Shri M.K. Miglani, Dy. Commissioner, Gurgaon.
13. Dr. M.L. Laroia, Medical Officer, I/C, Nuh Hospital.
14. Dr. O.P. Kapur, District Family Planning Officer, Gurgaon.
15. Shri Pritam Singh, Supdt. Engineer, HSEB, Faridabad.
16. Shri Rehmat.
17. Dr. Smt. S. Laroia, Medical Officer, Nuh Hospital.
18. Shri Safed Khan.
19. Dr. S.C. Kalra, Medical Officer, Primary Health Centre, Mandkola.
20. Shri S.D. Bhambri, Chief Secy., Haryana.
21. Shri S.S. Bajwa, Inspector General of Police, Haryana.
22. Shri S.S. Vohra, Executive Engineer, HSEB, Palwal.
23. Shri Tek Chand Sharma, Sr. Supdt. of Police, Gurgaon.

Case : Detention case of Shri Iswar Lal Choudhary of Bhiwani

1. Shri Banarsi Das Gupta, Chief Minister, Haryana.
2. Shri Iswar Lal Choudhary, District Employment Officer, Bhiwani.
3. Shri Parma Nand, District Inspector, CID, Bhiwani.
4. Shri P.N. Bhandari, Jt. Director of Employment, Haryana.
5. Shri R.S. Varma, District Magistrate, Bhiwani.
6. Shri Tilak Raj, Inspector Police Station, City, Bhiwani.
7. Shri Y.S. Nakai, Sr. Supdt. of Police, Bhiwani.

Case : Detention of Shri Pitambar Lal Goyal

1. Dr. A.C. Jain, Chief Medical Officer, Rohtak.
2. Shri B.D. Gupta, Chief Minister, Haryana.
3. Dr. B.S. Chauhan, Assistant Professor, Ophthalmology, Rohtak Medical College.
4. Shri Harnam Singh Bhai, Station House Officer, Police Station Sadar, Bhiwani.
5. Shri J.D. Gupta, Principal Secy. to Chief Minister, Haryana.
6. Shri Kalyan Rudra, Dy. I.G. of Police, QTD, Haryana.
7. Shri Maman Ram, Driver in the office of Executive Engineer, PWD (B & R), Bhiwani.
8. Shri Mangat Ram Vaid.
9. Shri M.L. Sharma, Supdt., Jail Deptt., Haryana Sectt.
10. Shri Narinder Singh, Advocate, Bhiwani.
11. Shri P.L. Goyal, Advocate, Bhiwani.
12. Dr. P.R. Sondhi, Director of Health Services, Haryana.
13. Shri Ram Pratap.
14. Shri R.S. Verma, District Magistrate, Bhiwani.
15. Dr. S.K. Mahajan, Asstt. Professor, Medicine, Rohtak Medical College.
16. Shri S.D. Bhamri, Chief Secy. Haryana.
17. Shri Y.S. Nakai, Sr. Supdt. of Police, Bhiwani.

Case : Hissar Demolition Case

1. Shri B.D. Gupta, Chief Minister, Haryana.
2. Shri Jai Kumar Jain.
3. Shri K.N. Joshi.
4. Shri Lalit Kumar.
5. Shri L.M. Jain, District Magistrate, Hissar.
6. Prem Kumar Jain.

Case : Implementation of Family Planning Programme during the Emergency

1. Dr. Karan Singh, Minister for Health and Family Planning, Government of India.

Case : Complaint of Shri Mandhu Ram Saini of village Bijwasan reg. sterilization of his dumb bachelor son

1. Shri Narain Singh.
2. Shri Hazari.
3. Dr. R.P.S. Birhhan, Medical Officer incharge, Bijwasan Dispensary, Delhi.

Case : Complaint of Shri Shangara Masih of Fatehpur Churia, District Gurdaspur regarding the suicide of his son following his alleged forcible sterilisation at Delhi

1. Shri Dharam Pal.

Case : Purchase of Sterilization cases and Motivation certificates by School Teachers

1. Smt. Jasbir Kaur Dhir, Teacher, Government Girls Higher Secondary School, Inder Puri.
2. Shri S.C. Kochhar, Education Extension Officer, Family Planning Centre, Dindayal Upadhy Hospital, Delhi.
3. Shri Uma Shankar Saxena, Teacher, Govt. Boys Higher Secondary School, Sector V, R.K. Puram.
4. Smt. Kulwant Kaur Batra, Teacher, MCD School, Reghupur Pura.

Case : Organisation of Motivational Camps and alleged excesses relating to Family Planning Programme in Delhi

1. Shri K.L. Dua, Asstt. Secy., Delhi Branch, Indian Red Cross Society.
2. Smt. Amarjeet Soni, Lady Health Visitor, Navin Shahdara, Delhi.
3. Dr. O.P. Sharma, Director of Health and Family Welfare, Delhi.
4. Miss Raj Uppal, Principal, Government Girls Higher Secondary School, Lawrence Road, Delhi.
5. Shri A. Biswas, Director of Education, Delhi Administration, Delhi.
6. Smt. Sarla Bhatnagar, Education Officer, District North Delhi.
7. Shri Jugminder Dasgupta, Teacher, Kamla Nehru Model Public School, Dayalpur, Delhi.
8. Miss Kamlesh Aggarwal, Headmistress, Kamla Nehru Model Public School, Dayalpur, Delhi.